

1989

# Sandy City v. Salt Lake County Water Conservancy District : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

## BRIEF

890135

IN THE UTAH SUPREME COURT

IN THE MATTER OF THE  
ORGANIZATION OF THE SALT LAKE  
COUNTY WATER CONSERVANCY  
DISTRICT

SANDY CITY, a municipal corporation, and J. STEVEN NEWTON,

Plaintiffs and Appellants,

v.

SALT LAKE COUNTY WATER  
CONSERVANCY DISTRICT, and  
JOHN DOES NOS. 1-10,

Defendants and Respondents, :

GRAND COUNTY WATER CONSERVANCY  
DISTRICT and WEST VALLEY CITY.

Intervenors.

: BRIEF OF RESPONDENT  
SALT LAKE COUNTY WATER  
: CONSERVANCY DISTRICT

Case No. 890135  
Argument Priority No. 14b

ON APPEAL FROM THE THIRD DISTRICT COURT OF SALT LAKE COUNTY,  
STATE OF UTAH, THE HONORABLE TIMOTHY HANSON PRESIDING

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**FILED**  
AUG 11 1989

Clerk, Supreme Court, Utah

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IN THE UTAH SUPREME COURT

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IN THE MATTER OF THE :  
ORGANIZATION OF THE SALT LAKE :  
COUNTY WATER CONSERVANCY :  
DISTRICT :

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SANDY CITY, a municipal :  
corporation, and J. STEVEN :  
NEWTON, :

Plaintiffs and Appellants, :

v. :

SALT LAKE COUNTY WATER :  
CONSERVANCY DISTRICT, and :  
JOHN DOES NOS. 1-10, :

Defendants and Respondents, :

GRAND COUNTY WATER CONSERVANCY :  
DISTRICT and WEST VALLEY CITY, :

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### **STATEMENT OF JURISDICTION**

Appeal is taken from an order, dated March 10, 1989, by the Honorable Timothy R. Hanson of the Third Judicial District Court, dismissing the Amended Complaint of Sandy City and J. Newton Steven (collectively "Sandy City") for declaratory relief in this consolidated action. Utah Code Section 78-2-2(3)(j) confers on this Court jurisdiction over the appeal.

### **STATEMENT OF THE ISSUES**

Sandy City's statement of the Issues Presented on Appeal generally encompasses the claims of its Amended Complaint, but does not set forth all of the issues on appeal, nor does so in objective terms. The issues decided by the district court in granting the motion to dismiss and appealed from are as follows:

(1) Does Section 73-8-50, Utah Code Ann. (Supp. 1989), of the Metropolitan Water District Act ("MWD Act") provide a procedure by which Sandy City can withdraw from a water conservancy district created under the Utah Water Conservancy Act ("UWC Act")?

(2) Is the statutory grant of the power to levy taxes to water conservancy districts under Section 73-9-15, Utah Code Ann. (1980), prohibited by the Utah Constitution?

(3) Does the Resolution Providing for the Issuance of Water Conservancy Revenue Bonds, adopted February 6, 1987 ("Master Bond Resolution"), constitute a general obligation of the Salt Lake County Water Conservancy District ("District") requiring that an election be held for the approval of bonds issued thereunder?

(4) Did the notice of the agenda for the regularly scheduled November 17, 1988 meeting of the board of directors for the District ("District Board"), at which a resolution authorizing the publication of notice of intent to issue bonds was discussed and passed, comply with the requirements of the Utah Open and Public Meetings Act ("Open Meetings Act")?

(5) Was the publication of notice of intent to issue bonds sufficient under the requirements of Section 73-9-32(5), Utah Code Ann. (Supp. 1989), and was it otherwise legally adequate in content and notice to the public?

(7) Does the district court have statutory authority or inherent power to order, approve or fashion a procedure by which Sandy City could withdraw from the District or submit for public approval by election matters of District governance?

## DETERMINATIVE CONSTITUTIONAL PROVISIONS AND STATUTES

Utah Const. art V. § 1

Utah Const. art VI. § 28

Utah Const. art XIII. § 5

Utah Code Ann. § 11-14-21 (Supp. 1989)

Utah Code Ann. § 73-8-50 (Supp. 1989)

Utah Code Ann. § 73-9-30 (1980)

Utah Code Ann. § 73-9-32 (Supp. 1989)

## STATEMENT OF THE CASE

### PROCEEDINGS IN THE DISTRICT COURT

Sandy City and J. Steven Newton, the mayor and a resident of Sandy City, filed an Amended Complaint seeking declaratory relief against the District. (R. 31-51. See Addendum)<sup>1</sup> Sandy City challenged the District's taxing and bonding authority, and the adequacy of the District's recent notice of intent to issue revenue bonds and the agenda for the District Board's November 17, 1988 meeting. Sandy City also asked the district court: (a) to rule that Section 73-8-50 permitted it to withdraw from the District by means of a vote of Sandy City residents, or (b) in the alternative, to fashion wholly new procedures for Sandy City to

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<sup>1</sup> References to the record shall be denoted as "(R. \_\_\_\_.)"; references to the Addendum A (or supplement) to the record shall be denoted as "(S. \_\_\_\_.)."

withdraw from the District and for District voters to vote on matters decided by the District Board.<sup>2</sup>

The District moved to dismiss the Amended Complaint. (S. 67-79.) Sandy City opposed the District's motion and moved for partial summary judgment as to the District's taxing and bonding authority and Sandy City's right to withdraw from the District. (R. 53-69.) Sandy City filed several affidavits in support of its motion for partial summary judgment, which were not considered by the district court. (R. 124 (order); S. 226-68 (affidavits).) The district court dismissed Sandy City's Amended Complaint. (R. 123-128; See Addendum.)

#### STATEMENT OF MATERIAL FACTS

The sole factual framework before this Court is found in the Amended Complaint.<sup>3</sup> (R. 31-51.)

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<sup>2</sup> Sandy City's action was consolidated with the 1953 action entitled In The Matter Of The Organization Of The Salt Lake County Water Conservancy District, Civil No. 92340, wherein the District was originally organized. (R.121-22.) Grand County Water Conservancy District and West Valley City intervened in the consolidated action as defendants. (R.124.)

<sup>3</sup> Sandy City included in its Statement of the Case information contained in affidavits filed in support of its motion for partial summary judgment and other documents not considered by the district court. (Appellants' Brief n. 2, 3, 6-16, 24-25, 29, 31-34.) Reference to those documents is, therefore, improper on appeal.



### Utah Water Conservancy District Act.

1. In 1941 the Utah Legislature enacted the UWC Act. 1941 Utah Laws ch. 99 (currently codified in Utah Code Ann. §§ 73-9-1 to -43 (1980 and Supp. 1989).) The Legislature declared that the "conservation and development" of the State's water resources through the creation of water conservancy districts are a "public use" which would directly or indirectly benefit the entire State. Utah Code Ann. § 73-9-1(a)-(f) (1980).

2. The UWC Act sets forth procedures for the organization of water conservancy districts as political subdivisions (quasi-municipal corporations) of the State. Id. § 73-9-7(7)(b) (Supp. 1989). Jurisdiction to establish such districts, in accordance with legislatively specified requirements, is given to district courts upon petition by the landowners in a proposed district. See id. §§ 73-9-3, 4 (1980 and Supp. 1989). The UWC Act vests governance of such districts in a board of directors. Directors for multi-county districts, such as the District, are appointed by the Governor subject to the advice and consent of the Senate, from a list of names submitted to him by the governing bodies of the counties and cities within a district. Id. § 73-9-9(1)(b) (Supp. 1989).

4. Water conservancy districts are given broad powers to develop water resources and to provide water, both wholesale and retail, to customers within or without its boundaries. See id.

§ 73-9-13. Districts are empowered to levy taxes. See id.

§ 73-9-15 (1980). Within statutory constraints, they are also empowered to add property to a district, id. § 73-9-29 (Supp. 1989), and to exclude existing lands from a district, id.

§ 73-9-30 (1980).

**Organization of the Salt Lake County Water Conservancy District.**

5. The Salt Lake County Water Conservancy District was organized in 1951 by a Decree of Organization issued by the District Court. (R. 33, 44-49.) Over its history, the District has added significant additional property and now serves some 450,000 persons. The property contained in Sandy City is generally included within the District,<sup>4</sup> (R. 33), as is all of the property in Salt Lake County except for the incorporated areas of Salt Lake City and Alta. The District sells water to 19 entities, most of which are public entities.

**Background of this Dispute.**

6. In 1988 Sandy City formally petitioned to join the Salt Lake City Metropolitan Water District ("MWD"), (R. 35-36, 50-51), and the MWD conditionally accepted the petition in January 1989. (R. 36.) In July 1988, Sandy City submitted a request to

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<sup>4</sup> Sandy City has been a member of the District since 1951. (R. 35.) Over the years, Sandy City has purchased water from the District, including at least five thousand acre-feet of water since 1983. Sandy City continues to receive the benefit of that water at the current time.

the District to disconnect or withdraw from the District. (Id.) That request was denied by the District Board on November 17, 1988 as not being in the best interests of the public and public entities served by the District and because there were bonds of the District outstanding. (R. 36-37.)

7. On November 17, 1988, the District Board also passed a resolution authorizing the publication of a notice of intent to issue bonds in an amount up to \$26.5 million, the proceeds of which were to be used to pay for the much-needed acquisition of an additional 30,000 acre-feet of water, to fund a new pumping station, and to fund in part a new headquarters complex. (R. 37.) Plaintiff Newton, the Mayor of Sandy City, and Byron Jorgenson, the Chief Administrative Officer of Sandy City, both members of the District Board, voted against the resolution.

#### **SUMMARY OF ARGUMENT**

1. Introduction. This Court has already sustained the constitutionality of the UWC Act. Sandy City's concerns about the problems allegedly created by water conservancy districts should be addressed to the Legislature, not to this Court.

2. Withdrawal from the District. Sandy City argues that Section 73-8-50 of the MWD Act governs the withdrawal of a municipality from a water conservancy district. Sandy City's interpretation leads to the absurd result under Section 73-8-50

that a city which holds an election on a proposed withdrawal from a water conservancy district must certify the election results to the board of directors of a metropolitan water district, even if the municipality has no intention of joining a metropolitan water district. Sandy City's argument is also inconsistent with the casual usage of the terms "district" and "water district" in the MWD Act. If these terms were to be given different meanings (as Sandy City suggests), the MWD Act would be confusing and nonsensical. Moreover, Sandy City's argument directly contradicts Section 73-8-1 which states that the MWD Act applies only to "water districts" created under the MWD Act, i.e., metropolitan water districts. Finally, the parallel property addition and withdrawal procedures in the MWD Act, as well as in the UWC Act, demonstrate that each act provides its own exclusive procedures for addition and withdrawal of property.

Sandy City's construction of Section 73-8-50 is also inconsistent with the legislative history of the MWD Act. In 1935, when the MWD Act was passed, there were no other water districts in existence and, therefore, the Legislature had no need to distinguish between metropolitan water districts and other "water districts." In addition, the title of the MWD Act, which strongly indicates of the Legislature's intent, states that the MWD Act provides only for the "exclusion of area" from a metropolitan water district.

3. Taxing Authority. This Court has already held that the Legislature may delegate the power of taxation to water conservancy districts. Because of the reliance of water conservancy districts, bondholders and the public at large on those decisions, that precedent should be followed in this case.

The UWC Act does not violate the separation of powers clause in Article V, Section 1 the Utah Constitution. That clause operates to keep the three branches of government separate at the state level and does not prevent the delegation of the taxing power to quasi-municipal corporations. Moreover, Article XIII, Section 5 only limits the delegation of the taxing power to quasi-municipal corporations for matters of purely local concern, and not for matters of statewide concern, such as the construction of large scale water projects. Similarly, the UWC Act does not violate the "Ripper Clause" in Article VI, Section 28 of the Utah Constitution. Water conservancy districts are not special commissions. They have been created to deal with water development and wholesale -- matters of statewide concern.

4. Bond Election. Sandy City argues that Section 6.19 of the Master Bond Resolution provides for the levy of taxes at the maximum rate and, therefore, requires an election under Section 73-9-32(1) to approve the bonds. However, Section 6.19 does not require the levy of taxes at the maximum rate and, in any event, does not constitute an obligation requiring an election because

the taxes are not levied to pay a debt, but rather to pay for the operation and expenses of the District.

5. Bond Notices. Sandy City makes several technical attacks on the sufficiency of the District's bond and meeting notices. However, the District fully complied with all applicable notice requirements.

6. Equitable Remedies. In the absence of express statutory authority, district courts do not have the power to fashion procedures for the withdrawal of property from water conservancy districts or for the governance of such districts by popular referendum. The enumeration of a district court's duties in the UWC Act impliedly precludes the existence of other powers and duties under that act.

## ARGUMENT

### I. THE SELECTION OF THE "GOVERNANCE MODEL" FOR WATER DEVELOPMENT IN THE STATE RESTS WITH THE LEGISLATURE.

In 1941, approximately six years after the passage of the MWD Act, the Utah Legislature authorized the creation of water conservancy districts to facilitate the conservation and development of the State's water resources in unincorporated and incorporated areas. This Court has already sustained the constitutionality of water conservancy districts and other kinds of districts on several occasions. See Patterick v. Carbon Water

Conser. Dist., 145 P.2d 503 (Utah 1944), overruled in part, Timpanogos Planning & Water Manage. Agency v. Central Utah Water Conser. Dist., 690 P.2d 562, 572 (Utah 1984) (water conservancy districts);<sup>5</sup> Barlow v. Clearfield City Corp., 268 P.2d 682 (Utah 1954) (water conservancy districts); see also Branch v. Salt Lake County Serv. Area No. 2, 460 P.2d 814 (Utah 1969) (county service areas); Tygesen v. Magna Water Co., 226 P.2d 127 (Utah 1950) (county improvement districts).

Sandy City argues that the decision of the district court, which followed the prior decisions of this Court, was erroneously based upon a "simple governance model" which is no longer valid. (Appellants' Brief at 12.) Sandy City impliedly asserts that under existing circumstances, the proliferation of districts under various state statutes has created "serious local governance problems" in Utah which justifies a judicial re-examination of the constitutionality and propriety of such entities. (Id. at 14.)

Sandy City's constitutional concerns amount to nothing more than dissatisfaction with the current operation of the District as authorized by state statute. The Legislature has already determined the appropriate "governance model" that will

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<sup>5</sup> The Timpanogos decision prospectively overruled Patterick only to the extent that Patterick sustained the judicial selection of the District Board as provided under the UWC Act prior to 1983.

maximize the public welfare by authorizing the creation of water conservancy districts and other kinds of districts. Lehi City v. Meiling, 48 P.2d 530, 535 (Utah 1935) (it is within the prerogative of the legislature to determine how to promote the public welfare); Trade Comm. v. Skaggs Drug Centers, Inc., 446 P.2d 958, 963 (Utah 1968) (a court should not pass upon desirability of legislation or choose between opposing political philosophies). Respect for legislative prerogatives requires this Court to follow its prior decisions in upholding the constitutionality of the statutes under which such districts have been created.

II. SECTION 73-8-50 OF THE MWD ACT DOES NOT APPLY TO WATER CONSERVANCY DISTRICTS OR OTHERWISE PROVIDE A METHOD FOR SANDY CITY TO WITHDRAW FROM THE DISTRICT.

Sandy City asserts that it may use the withdrawal-by-election mechanism for metropolitan water districts in Section 73-8-50 of the MWD Act to withdraw from the District. To arrive at that result, Sandy City notes that Section 78-8-50 uses the phrase "any water district" rather than the phrase "metropolitan water district," as occasionally used elsewhere in the MWD Act. Sandy City argues that the Legislature's choice of language demonstrates that the withdrawal-by-election mechanism of the MWD Act was intended to apply to any and every "water district," defined by Sandy City as a "special function government having



water as its central object," created under the various statutes of this state.<sup>6</sup> (Appellants' Brief at 20.) Sandy City's interpretation of the phrase "any water district" is inconsistent with the language, operation and legislative history of the MWD Act as well as the provisions of the acts creating the other entities that Sandy City calls "water districts." All of these sources clearly reveal that the term "any water district" as used by the Legislature in the MWD Act in 1935 was meant to apply only to metropolitan water districts created under the MWD Act.

**A. THE MWD ACT MUST BE CONSTRUED AS A WHOLE**

The meaning of Section 73-8-50 must be taken from all of the words of that section and from the context of the MWD Act as a whole. See, e.g., Cannon v. McDonald, 615 P.2d 1268, 1270 (Utah 1980); Metropolitan Water Dist. v. Salt Lake City, 380 P.2d 721, 724 (Utah 1963) ("entire context of statute"); see also Jensen v. Intermountain Health Care, Inc., 679 P.2d 903, 906 (Utah 1984) ("separate parts of an act should not be construed in isolation from the rest of the act"). The phrase "any water district" in

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<sup>6</sup> Sandy City has identified at least seven different types of entities that would qualify as water districts under its definition: irrigation districts, water conservancy districts, metropolitan water districts, special service districts, county service districts, drainage districts and water improvement districts. (Appellants' Brief at 21 n.54.)

Section 73-8-50 should not be defined so as to conflict with other provisions in the MWD Act, see, e.g., Taft v. Glade, 201 P.2d 285, 287 (Utah 1948), or to create absurd results, see, e.g., Curtis v. Harmon, 575 P.2d 1044 (Utah 1978).

1. The Words and Operation of Section 73-8-50 Do Not Support Sandy City's Intrepretation.

Sandy City's interpretation of the scope of Section 73-8-50 leads to an absurd construction of that section. Section 73-8-50 provides that after an election has been held where the majority of the electors have'voted in favor of withdrawal, the "result [of the election] shall be certified by the governing body of such municipality to the board of directors of the district." Utah Code Ann. § 73-8-50 (1980) (emphasis added). "Board of Directors" is defined in Section 73-8-2 to mean a board created under Section 73-8-20, or in other words, the board of directors of a metropolitan water district. Id. §§ 73-8-2, 20 (1980 and Supp. 1989). Sandy City's interpretation of this section would require the withdrawing municipality to certify the election results, not to the board of directors of the water conservancy district from which the municipality was withdrawing, but rather to an unidentified metropolitan water district board. This construction of Section 73-8-50 is absurd because there is nothing in Section 73-8-50 (under Sandy City's interpretation) that requires a municipality to join a metropolitan water district

after withdrawing from a water conservancy or other type of district. Consequently, the metropolitan water district board to which the election results would be reported could be a complete stranger to the election with no interest therein.<sup>7</sup> The proper construction of Section 73-8-50, limiting its application to the withdrawal of a municipality from a metropolitan water district, provides that the election results be certified to the board of directors of the municipal water district from which the municipality is withdrawing.

2. The Other Provisions of the MWD Act Reveal that Section 78-8-50 Applies Only to Metropolitan Water Districts.

The MWD Act refers to districts created thereunder in a variety of ways. This casual style indicates that the drafters had no special meaning intended by use of the phrase "any water district" as it appears in Section 73-8-50 other than to refer to districts created under the MWD Act. In addition, specific

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<sup>7</sup> Even if the phrase "board of directors of the district" were defined (in contravention of the statutory definition) as meaning the board of directors of the water conservancy or other kind of district from which the municipality was withdrawing, Sandy City's interpretation of Section 73-8-50 would still fail because several of the entities referred to as "water districts" by Sandy City (and allegedly subject to Section 73-8-50) do not have boards of directors to which the election results could be certified. Special service districts have "governing authorities," Utah Code Ann. § 11-23-2(3)(1986); water improvement districts have "boards of trustees," id. § 17-29-10.1; and drainage districts have "boards of supervisors," id. § 19-1-5.

provisions of the MWD Act, Sections 73-8-1 and 73-8-49, reveal that Section 73-8-50 applies only to withdrawal from metropolitan water districts.

a. General

Sandy City contends that the use of the phrases "metropolitan water district" and "any water district" indicates that the Legislature intended the phrases to have different meanings because each term in the MWD Act was used advisedly and must be given meaning. However, the rule of construction advanced by Sandy City does not apply where the "content otherwise requires." Grant v. Utah State Land, 485 P.2d 1035, 1036 (Utah 1971). The casual use of terms to describe metropolitan water districts in the MWD Act prevents application of that rule of construction in this case.

The MWD Act does not define "district" or "water district." Numerous references to "districts" are contained in the MWD Act and are given in various styles,<sup>8</sup> all of which from

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<sup>8</sup> References include "water districts", "such district", "such incorporated districts", "such metropolitan water district", "the district" (by far the most common reference), "metropolitan water district", "said district", "any metropolitan water district", "any such district", "any district", "a district", "any district incorporated under this chapter", "metropolitan water district formed hereunder", "said metropolitan water district", "any metropolitan water district incorporated under this chapter", "any metropolitan water district incorporated hereunder", "water district", "any district organized hereunder", and "any water district incorporated thereunder".

their context plainly refer to districts which are created under the MWD Act. To attribute a different meaning to each of these variations, as suggested by Sandy City, would render the MWD Act incomprehensible.

b. Section 73-8-1

Section 73-8-1 specifically demonstrates that the term "water district" was used to designate a metropolitan water district created under the MWD Act. Section 73-8-1 reads as follows:

This act shall be known as the "Metropolitan Water District Act" and shall apply to the incorporation, organization, government, maintenance and operation of the water districts herein provided for and described, and to the board of directors herein referred to.

Utah Code Ann. § 73-8-1 (1980) (emphasis added). The only "water districts" whose "incorporation, organization, government, maintenance and operation" are "provided for and described" in the MWD Act, are metropolitan water districts.

Sandy City's interpretation of Section 73-8-50 is inconsistent with Section 73-8-1 in that it would expand the scope and application of the MWD Act beyond the governance of the metropolitan water districts created in that act and would do so in a capricious, inconsistent manner. Moreover, the use of the phrase "water district" in Section 73-8-1 to mean metropolitan

water district indicates that a similar meaning should be given to the phrase "any water district" in Section 73-8-50.

**c. Section 73-8-49**

Section 73-8-49 also reveals that the withdrawal-by-election provision of the MWD Act applies only to metropolitan water districts. Sandy City argues that Section 73-8-49(2) of the MWD Act, dealing with the addition of a municipality by election to a metropolitan water district, represents a parallel to the procedure allegedly permitting a municipal election for the withdrawal of a city from a water conservancy district (or other "water district") as provided in Section 73-8-50. Sandy City is correct that there is a parallelism, but that parallelism rebuts Sandy City's contention.

The parallelism between these sections implies that Section 73-8-50, like Section 73-8-49(2), applies only to metropolitan water districts. Indeed, a similar parallelism of property addition and withdrawal procedures appears in the UWC Act (see Sections 73-9-29 and 73-9-30), which provide that property is added and withdrawn by petition of property owners and judicial

decree.<sup>9</sup> Thus, the logical conclusion is that the Legislature provided internally parallel procedures for the addition and withdrawal of property under each act and that the procedures set forth in the MWD Act do not apply to the UWC Act.

**B. THE LEGISLATIVE HISTORY OF THE MWD ACT ALSO SHOWS THAT THE WITHDRAWAL MECHANISM IN THE MWD ACT APPLIES ONLY TO METROPOLITAN WATER DISTRICTS.**

Whenever possible, a statute should be construed to further the legislative intent behind the act. See, e.g., Board of Educ. v. Salt Lake County, 659 P.2d 1030, 1033 (Utah 1983). The legislative history and purpose of the MWD Act clearly demonstrates that it only applies to metropolitan water districts.

**1. Sandy City's Argument Ignores the Fact that in 1935 There Were No Other Water Districts.**

The MWD Act, including Section 73-8-50, was enacted in 1935. At that time, there were no other statutes authorizing the

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<sup>9</sup> The Legislature has also provided a unique method of property addition and withdrawal for most of the other entities referred to as "water districts" by Sandy City. See Utah Code Ann. §§ 11-23-25, 27 (1986) (special service district); id. §§ 17-6-25 to -32 (1987) (water improvement district); id. §§ 17-29-10, 16, 17 (1980 & Supp. 1989) (county service area); id. §§ 19-3-1, 19-6-1 (1980) (drainage district); id. §§ 73-7-30 to -34, 39 to -42 (1980), (irrigation district).

creation of water districts in Utah.<sup>10</sup> Thus, the drafters of the MWD Act had no need to distinguish metropolitan water districts from other types of districts in Utah. The reference in Section 73-8-50 to "any water district" in 1935 could only have referred to metropolitan water districts because no other kinds of water districts were authorized in Utah. Moreover, it is unlikely that the Legislature would have hidden a withdrawal mechanism of general applicability in the MWD Act without some indication of its existence in the statutes creating the other kinds of districts.

2. The Title of the MWD Act Evidences the Legislature's Intent to Limit Section 73-8-50 to Withdrawal from a Metropolitan Water District.

The title to the MWD Act reveals that it is to apply only to metropolitan water districts. The title reads as follows:

An Act Providing for the Incorporation,  
Government and Management of Metropolitan Water  
Districts, Authorizing Such Districts to Incur  
Bonded Debt and to Acquire, Construct, Operate  
and Manage Works and Property, Providing for  
the Taxation of Property Therein and the  
Performance of Certain Functions Relating  
There to by Officers of Counties, Providing for

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<sup>10</sup> In the early 1900s, water users associations were formed in response to the federal Water Reclamation Act. In 1919, the Legislature passed an act enabling the creation of irrigation districts. 1919 Utah Laws ch. 68. There was no language in that irrigation district act to suggest that irrigation districts were considered to be water districts.



the Addition of Area Thereto and the Exclusion of Area Therefrom and Authorizing Municipal Corporations to Aid and Participate in the Incorporation of Such Districts.

1935 Utah Laws ch. 110 (emphasis added).

Under the usual principles of statutory construction, the title of the bill indicates the legislative intent with regard to matters expressed therein. See American Elec. Power Serv. Corp. v. State, 619 P.2d 314 (Utah 1980); Peffer v. City of Des Moines, 299 N.W.2d 675 (Iowa 1980). The title of the MWD Act unambiguously states that the MWD Act provides only for the exclusion of area from metropolitan water districts. See also Utah Code Ann. § 73-8-1 (1980). Section 73-8-50 should be interpreted in accordance with the legislative intent derived from the title of the MWD Act as being limited to the withdrawal of municipalities from metropolitan water districts.<sup>11</sup>

**C. THE WATER CONSERVANCY ACT PRECLUDES SANDY CITY'S PROPOSED INTERPRETATION OF SECTION 73-8-50.**

Section 73-9-41 of the UWC Act provides that all other acts conflicting with the UWC Act or "otherwise interfering with

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<sup>11</sup> Furthermore, under Sandy City's interpretation of Section 73-8-50, the MWD Act appears to violate Article VI, Section 22 of the Utah Constitution, which requires that no bill may be passed containing more than one subject, and that the subject of a bill be clearly expressed in the title.

the accomplishment of the purposes of this act . . . are hereby declared not operative and not effective as to this act." Sandy City's interpretation of Section 73-8-50 would interfere with the accomplishment of the purposes of the UWC Act because Section 73-9-30 of the UWC Act plainly provides for the circumstances and conditions under which property may be withdrawn from water conservancy districts.<sup>12</sup> There is no indication in the UWC Act (or the MWD Act) that the provisions of the MWD Act apply in whole or in part to water conservancy districts. In the absence of any such indication, Section 73-9-41 precludes the use of another withdrawal mechanism.

III. THE TAXING POWER DELEGATED BY THE LEGISLATURE TO WATER CONSERVANCY DISTRICTS IS CONSTITUTIONALLY PERMISSIBLE.

Sandy City contends that the delegation to water conservancy districts of the power to levy taxes violates several provisions of the Utah Constitution. Before dealing with Sandy City's specific arguments, two general points need to be made.

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<sup>12</sup> Under customary principles of statutory construction, the Legislature's placement of a property withdrawal mechanism in the UWC Act implies that it was intended to be the exclusive means of withdrawal. See 73 Am.Jur. 2d, Statutes, §§ 211-12 (1974). If the Legislature had intended the UWC Act to be governed by the withdrawal provision of the MWD Act, it would have either expressly incorporated that statute or set forth the withdrawal-by-election mechanism in the UWC Act itself.

First, the constitutionality of a statute must be presumed by this Court and Sandy City carries a heavy burden of persuasion to rebut that presumption. See, e.g., City of West Jordan v. Utah State Retirement Bd., 767 P.2d 530, 532 (Utah 1988). Every reasonable presumption must be indulged in and every reasonable doubt resolved in favor of constitutionality. See, e.g., Branch v. Salt Lake County Serv. Area No. 2, 460 P.2d 814, 815 (Utah 1969).

Second, this Court has already upheld the constitutionality of the taxing power of water conservancy districts. In Patterick v. Carbon Water Conservancy District, 145 P.2d 503 (Utah 1944), this Court held that because a water conservancy district is a quasi-municipal corporation formed for public purposes, "it is within the discretion of the Legislature to grant it any powers, not expressly inhibited by the Constitution, to further such purposes, including the power of taxation." Id. at 511. The constitutionality of the taxing power of water conservancy districts was reaffirmed in Barlow v. Clearfield City Corp., 268 P.2d 682 (Utah 1954), in which the Court said:

The Legislature intentionally placed on the district the power and duty to levy taxes on the property of the district. . . . Without this the districts would be greatly hampered and in many instances would be unable to accomplish their purposes. . . . Since there is no constitutional provision which prevents the Legislature from creating this kind of a

corporate entity . . . this statute is not unconstitutional.

Id. at 688 (emphasis added). In order to accept Sandy City's argument, this Court would have to overrule these cases. This would also undermine the traditional means of conserving and delivering water in this State.<sup>13</sup> The holding of this Court in Freeman v. Stewart, 273 P.2d 174 (Utah 1954) is applicable to this case. In Freeman, this Court refused to overturn cases upholding the constitutionality of county sanitation districts, and stated:

In a well-ordered society, it is important that people know what their legal rights are, not only under the constitutions and legislative enactments, but also as defined by judicial precedent, and having conducted their affairs in reliance thereon, ought not to have their rights swept away by judicial decree. And this is especially so where rights of property are involved. The law laid down in these decisions has been acted upon and numerous improvement districts created and financed, so that it must be said to be a rule of property with respect to which the doctrine [of stare decisis] should apply with all its force. And it should be left to the legislature to make any change in

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<sup>13</sup> Millions of dollars in financing and extensive properties and arrangements dealing with the conservation and delivery of water in this arid State are governed by the statute and cases challenged by Sandy City, and have been relied upon by investors and residents of the State for decades. In addition, Sandy City's argument that the delegation of taxing power is unconstitutional would not only undermine the outstanding bonds of water conservancy districts throughout the State, but would also impair the outstanding bonds and future financings of other kinds of districts throughout the State.

the law, except perhaps in a most unusual exigency.

Id. at 176. Consequently, this Court should follow its precedent and uphold the constitutionality of the UWC Act.

**A. ARTICLE V, SECTION 1 - SEPARATION OF POWERS**

Sandy City contends that the delegation to the District of the taxing power under Section 73-9-15 and the delegation to the district court of the power to confirm the boundaries of local government under Section 73-9-7,<sup>14</sup> both of which are legislative powers, violates the separation of powers requirement in Article V, Section 1 of the Utah Constitution. That section provides:

The powers of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial;

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<sup>14</sup> Sandy City contends that because district courts approve water conservancy district boundaries upon which tax jurisdiction is based, they are performing a non-delegable legislative function. The case cited by Sandy City, Doenges v. City of Salt Lake, 614 P.2d 1237 (Utah 1980), does not consider Article V, Section 1 of the Utah Constitution. While Doenges does say that setting boundaries is a legislative function, it recognizes the right of the Legislature to delegate that function. Id. at 1238. See also Freeman v. Centerville City, Utah, 600 P.2d 1003 (Utah 1979). Moreover, since the boundaries of a district are actually determined by landowners who submit the petition, a district court's confirmation of those boundaries is merely a ministerial or administrative function which does not violate the separation of powers clause. See Utah Code Ann. §§ 73-9-4(7)(c), 7 (Supp. 1989); Timpanogos Planning & Water Manage. Agency v. Central Utah Water Conser. Dist., 690 P.2d 562, 570-71 (Utah 1984) (cases cited therein), State v. Gallion, 572 P.2d 683, 687 (Utah 1977).

and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Utah Const. art. V, § 1.

The general rule is that a legislature can delegate to municipalities appropriate quasi-municipal powers for local government without violating the implied principle of organic law that the legislature shall not delegate its general lawmaking power. One of such delegable powers is the power to tax. McQuillin, Municipal Corporations, § 4.13 (3d ed. 1988). There is no reason why the general rule should not apply to a quasi-municipal corporation such as the District, inasmuch as Section 73-9-7(7)(b) provides that water conservancy districts shall have all the powers of a municipal corporation.<sup>15</sup> See id. § 44.07 (3d ed. 1988) ("the taxing power may be delegated to . . . quasi-municipal corporations"). The Utah Supreme Court recognized this principle in Patterick when it said "it is within the discretion of the Legislature to grant [the water conservancy district] any powers, not expressly inhibited by the Constitution

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<sup>15</sup> Municipal corporations, as well as water conservancy districts, derive their legal authority from state legislative enactment. See Title 10 of the Utah Code Ann.

. . . including the power of taxation." Patterick, 145 P.2d at 511.

The separation of powers clause is intended to keep the three branches of government at the state level separate. As this Court once stated: "Article V, Section 1 is not directed towards the delegation of legislative power per se but proscribes the conferring of legislative functions on specified persons in the executive department to avert any potentiality for tyranny by concentrating power in these individuals." State v. Gallion, 572 P.2d 683, 687 (Utah 1977) (emphasis added); see also Timpanogos Planning & Water Manage. Agency v. Central Utah Water Conser. Dist., 690 P.2d 562 (Utah 1984) (delegation of legislative power to a "person" named in the Constitution as being in another branch of state government, i.e., district court, was improper). Municipal and quasi-municipal entities are not described in the Utah Constitution as belonging to either the judicial or executive branches of state government. Consequently, the Legislature is not prohibited from delegating to such entities the authority to tax.

Furthermore, the UWC Act does not present the problem that Article V, Section 1 was intended to prevent. The UWC Act does not allow any other entity to take power from the legislative department or to intrude upon its law making authority. See Gallion, 572 P.2d at 687 (constitution prevents government

branches from "aggrandizement of their policy . . . by exercising functions appertaining to another [branch]"). Moreover, the Legislature carefully limited both the purposes and scope of the taxing power granted to the District. There is no violation of the separation of powers provision in the letter or the spirit of the UWC Act.<sup>16</sup>

**B. ARTICLE XIII, SECTION 5.**

Sandy City attempts to bolster its separation of powers argument by pointing to Article XIII, Section 5 of the Utah Constitution, which, according to Sandy City, authorizes the Legislature to delegate taxing authority only to the "corporate authorities," i.e. municipalities, and not to water conservancy districts. (Appellants' Brief at 31.) Article XIII, Section 5 provides:

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

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<sup>16</sup> Sandy City's argument that Article V, Section 1 prevents any delegation of the power to tax property "unless expressly permitted by the Constitution," (Appellants' Brief at 30), is also inconsistent with the well established principle that "State Constitutions are mere limitations, and not grants, of powers." Salt Lake City v. Christensen, 95 P.523 (Utah 1928); Lehi City v. Meiling, 48 P.2d 530, 535 (Utah 1935); see also State v. Eldredge, 76 P.337, 339 (Utah 1904) (taxing power).



Utah Const. art. XIII, §5. Sandy City's interpretation of Article XIII, Section 5 is incorrect. Article XIII, Section 5 merely limits the State's power to impose taxes for the municipal purposes. It does not limit the State's power to delegate the power to tax to quasi-municipal corporations for public purposes.

The Utah Supreme Court has already rejected an Article XIII, Section 5 challenge to the UWC Act in Patterick, which while not expressly mentioned in the opinion, was briefed by the litigants and was thus before the Court. Other decisions from this Court have consistently recognized that Article XIII, Section 5 only prohibits the Legislature from imposing taxes solely for municipal purposes, or in other words, for the sole purpose of raising revenue for a municipality. See, e.g., Merkley v. State Tax Comm'n., 358 P.2d 991, 992 n.3 (Utah 1961) ("purposes of ... municipalities"); Freeman v. Stewart, 273 P.2d 174, 176 (Utah 1954) ("purposes of a municipal corporation"); Best Foods v. Christensen, 285 P.1001 (Utah 1930) ("sole purpose of raising revenue" for municipality); Wright v. Standford, 66 P.1061 (Utah 1901) ("county purposes").

Where the tax is levied for the benefit of the public at large, the prohibitions in Article XIII, Section 5 are inapplicable. In Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979), this Court rejected a challenge under

Article XIII, Section 5 to the taxing authority of a redevelopment agency. This Court stated that the redevelopment agency was "an arm of the State government, designed for State purposes" for the benefit of the public at large. Id. at 1342. The redevelopment agency confronted problems of a statewide nature and not merely of "local concern." Id. The Court concluded that the State, through the redevelopment agency, could levy taxes without infringing the Article XIII, Section 5 limitation on taxation for municipal purposes. Id. at 1343. See also Tribe v. Salt Lake City Corp., 540 P.2d 499, 504 (Utah 1975) (redevelopment agency); Branch v. Salt Lake County Serv. Area No. 2, 460 P.2d 814, 817 (Utah 1969) (improvement districts); Freeman v. Stewart, 273 P.2d 174, 176 (Utah 1954) (sanitation districts).<sup>17</sup>

The Utah Legislature has declared that the organization of water conservancy districts is not purely a matter of local

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<sup>17</sup> California courts have routinely upheld similar statutes against constitutional challenges under provisions almost identical to Article XIII, Section 5. The California courts have held that such statutes benefit the entire state and involve matters that are not of a "purely local character." Henshaw v. Foster, 169 P. 82, 84 (Cal. 1917) (metropolitan water districts); see also Pixley v. Saunders, 141 P.815, 818 (Cal. 1914) (sanitation districts); Peterson v. Board of Supervisors, 225 P. 28 (Cal. App. 1924) (reclamation districts). Colorado courts have also routinely rejected such constitutional challenges. See, e.g., City of Aurora v. Aurora Sanitation Dist., 149 P.2d 662 (Colo. 1944) (sanitation district); Milheim v. Moffat Tunnel Imp. Dist., 211 P. 649 (Colo. 1922) (tunnel improvements).

concern, but rather is a matter of public welfare that directly or indirectly benefits the entire State. Utah Code Ann.

§ 73-9-1 (1980). Such a declaration is entitled to "respect and weight by the judiciary and should not be overturned unless palpably erroneous." Utah Tech. Fin. Corp. v. Wilkinson, 723 P.2d 406, 412 (Utah 1986). Moreover, the decisions of this Court have sanctioned the finding that large scale water developments are not purely municipal concerns. Judge Wolfe, in his concurrence in Lehi City v. Meiling, 48 P.2d 530 (Utah 1935), stated:

[T]he building of an immense water project to serve many cities is in itself of a magnitude and character as to take it out of the category of municipal functioning.

Id. at 548. See also Barlow v. Clearfield City Corp., 268 P.2d 682, 687-88 (Utah 1954). Water conservancy districts facilitate the coordination of various governmental entities for the purpose of water development which would not otherwise be feasible on a purely local level. Such coordination benefits all persons within the State. Consequently, a levy of taxes by a water conservancy district is not a tax for solely a municipal purpose within the meaning of Article XIII, Section 5.

**C. ARTICLE VI, SECTION 28 - "RIPPER CLAUSE"**

Sandy City argues that the water conservancy district is a "special commission" within the meaning of Article VI, Section 28 of the Utah Constitution. That section provides:

The Legislature shall not delegate to any special commission, private corporation or association any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capital site or to perform any municipal functions.

Utah Const. art. VI, § 28.

The decisions of this Court demonstrate that a water conservancy district is not a special commission. In Tygesen, 226 P.2d 127 (1950), this Court held that the County Improvement District Act did not violate Article VI, Section 28. In that decision, the Court held that an improvement district, the same as a water conservancy district, was not a special commission:

These improvement districts are similar to the Metropolitan Water Districts and the Water Conservancy Districts. . . . In all of these acts once the initiating agencies have acted and a district has been formed their functions cease and the governing body of the district assumes full control of the district and its properties. This court has held that the Metropolitan Water Districts and the Water Conservancy Districts organized under those Acts were separate and distinct arms of the government and not special commissions, boards, private corporations or associations within the purview of the constitutional prohibition.

Id. at 130 (citing Lehi City, 48 P.2d at 530 and Patterick, 145 P.2d at 503)(emphasis added.) Moreover, in Patterick this Court held that the UWC Act was patterned after the Colorado Water Conservancy Act. Patterick, 145 P.2d at 505. In People ex rel.

Rogers v. Letford, 79 P.2d 274 (Colo. 1938), and People v. Lee, 213 P. 583 (Colo. 1923), the Colorado Supreme Court specifically held that the board of directors of a water conservancy district was not a "special commission" within the meaning of a Colorado constitutional provision identical to Utah's Article VI, Section 28. In Patterick, this Court cited Letford and Lee as persuasive precedent, notably citing Letford in holding that water conservancy districts constitutionally received the taxing power.

In Lehi City, this Court held that the board of directors of a metropolitan water district did not constitute a "special commission." Lehi City, 48 P.2d at 535. In his concurrence, Justice Wolfe explained that the question of whether a particular agency is a "special commission" is determined, not from the intrinsic meaning of those words, but in light of the purpose of Section 28, which is

to prevent the Legislature from interfering with the property and powers of municipal corporations through some other governmental agency specially set up for the purpose of doing that.

Id. at 547. Therefore, he concluded that if an agency is not set up to interfere with local government, then it is not a special commission. Justice Wolfe further explained that there is no interference with a municipal function when the entity in question performs work that the municipality could not perform, either

because of the magnitude or character of the project or because it was such a project which must necessarily serve more than one municipality. Id. at 548. He concluded that the building of large water projects to serve many cities is of such a magnitude and character. Consequently, the MWD Act did not violate Article VI, Section 28. Compare Salt Lake County v. Murray City Redev., 598 P.2d 1339 (Utah 1979) ("public agency created by the legislature to aid the state in some public work for the general welfare, other than to perform as another community government," is not a special commission); Tribe v. Salt Lake City Corp., 540 P.2d 499, 502-03 (Utah 1975) (quasi-municipal corporation set up to address statewide problem, i.e. urban blight, is not a special commission); Salt Lake County v. Salt Lake City, 134 P. 560, 563 (Utah 1913) (state tax on city for county detention facility involved state purposes, not merely "local affairs," and did not violate the Article VI, Section 28).<sup>18</sup>

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<sup>18</sup> Other states have upheld the constitutionality of similar entities against challenges under the "Ripper Clause." See, e.g., Henshaw v. Foster, 169 P. 82 (Cal. 1917) (metropolitan water district - involved more than "purely local affairs"); Pixley v. Saunders, 141 P. 815 (Cal. 1914) (sanitation districts); Fellom v. Redev. Agency, 320 P.2d 884 (Cal. App.), appeal dismissed, 358 U.S. 56 (1958) (blight is a matter of state interest not subject to the "Ripper Clause"); City of Aurora v. Aurora Sanitation Dist., 149 P.2d 662, 667 (Colo. 1944) (sanitation district); Milheim v. Moffat Tunnel Imp. Dist., 211 P. 655, 655 (Colo. 1922) (tunnel construction); State ex rel. Normile v. Cooney, 47 P.2d 637, 646 (Mont. 1935) (state water conservation board).

The present view of the Court is in accord with Justice Wolfe's concurrence in Lehi City. In Municipal Building Authority v. Lowder, 711 P.2d 273 (Utah 1985), the Court held that a municipal building authority did not constitute a special commission. The Court construed "the prohibitions of Article VI, Section 28 narrowly so as to facilitate flexibility in local governmental finance." Id. at 281 (citing Patterick, 145 P.2d at 503).

Under the above-cited precedent, a water conservancy district is not a "special commission." As was set forth in the UWC Act, water conservancy districts were established to provide a statewide benefit through the development of the State's water resources. Utah Code Ann. § 73-9-1 (1980). The undertaking of large "engineering projects" for the development of water resources is not such a uniquely municipal function that it must be (or can be) undertaken solely at the municipal level. Lehi City, 48 P.2d at 548 (Wolfe, J., concurring); Barlow v. Clearfield City Corp., 268 P.3d 682, 687-688 (Utah 1954). The building of a large water project to serve many cities is itself of a magnitude and character so as to take it out of the category of municipal functioning. Water conservancy districts do not levy taxes for the purpose of supplementing local government, rather, these districts are formed to cooperate with such local governments in the development of state water resources. The Legislature's

creation of the important financing mechanism created in the UWC Act should be sustained.<sup>19</sup>

IV. SECTION 6.19 OF THE MASTER BOND RESOLUTION DOES NOT REQUIRE THE LEVY OF TAXES OR FEES AT THE MAXIMUM RATE, NOR DOES IT CONSTITUTE AN OBLIGATION REQUIRING AN ELECTION.

Sandy City alleges that Section 6.19 of the Master Bond Resolution contains "terms and conditions" which, directly or indirectly, bind the District or its Board to set fees or levy taxes at the maximum rate contrary to their lawful authority, and

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<sup>19</sup> Sandy City argues that a court must undertake an "intense factual inquiry" to determine whether a violation of the "Ripper Clause" has occurred. (Appellants' Brief at 37-38 (citing City of West Jordan v. Utah State Retirement Bd., 767 P.2d 530 (Utah 1989).) However, West Jordan did not reach the "special commission" requirement, but assumed for the purpose of argument that the state retirement board was a special commission. Id. at 533. Moreover, the inquiry required for the balancing test in West Jordan consisted of an evaluation of the statutory characteristics of the district, not the subjective criticisms leveled at the District in Sandy City's affidavits. To the extent that the West Jordan analysis is relevant to the special commission issue, the UWC Act satisfies the balancing test described therein. Water conservation involves statewide interests and entails operations often beyond the capabilities of single municipalities. Local governments and the populace within a district also retain some control over water conservancy districts. Although an election is not required to create a district, a district cannot be formed if the petition is opposed by 20% of the landowners in the district. Utah Code Ann. § 73-9-7 (Supp. 1989). Moreover, the issuance of bonds either requires an election, or permits an election upon the filing of a petition signed by 5% of the electors in a district. Id. § 73-9-32. Finally, a district board is composed of persons selected from a small pool of candidates supplied by each governmental entity in the district. Id. § 73-9-9. In fact, Sandy City has two representatives on the District Board.



constitute a general obligation of the District so as to require an election. Section 6.19 of the Master Bond Resolution provides as follows:

Levy of Tax to Pay Operation and Maintenance Costs. The Issuer shall, so long as any of the Bonds or Contracts are Outstanding, levy annually the tax of .0004 on the dollar, or the maximum amount of such different annual levy as may be hereafter provided for by law, of assessed valuation of taxable property within the Issuer or so much thereof as shall be necessary, for payment of Operation and Maintenance Costs pursuant to the provisions of Section 73-9-16, Utah Code Annotated 1953, as amended.

Section 6.19 does not bind the District or its Board to set fees or levy taxes at the maximum rate, nor does it bind the District or its Board to do anything contrary to their lawful authority. It obligates the District to levy taxes only to the extent that the taxes are (a) necessary to pay the District's operation and maintenance costs, and (b) within the maximum amount provided for by law.<sup>20</sup> The taxes are to be levied only pursuant to the provisions of Section 73-9-16 of the Act. In other words,

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<sup>20</sup> Sandy City cites paragraph 16 of an "Order, Statement of Material Facts, Findings and Conclusions" adopted August 20, 1987 in the Hi-Country Estates Phase II matter, which generally refers to Section 6.19 as providing a maximum tax. This reference, however, is not accurate, was made in an uncontested matter and was intended merely as a summary. In any event, that statement cannot modify the actual language of Section 6.19, which plainly requires the District to levy only so much of the tax as shall be necessary to pay operation and maintenance expenses.

the District's obligation to levy taxes under Section 6.19 of the Master Bond Resolution is no broader than the District's authorization to do so under Section 73-9-16 of the Act. Furthermore, the District is authorized under Section 73-9-31(3) of the Act to agree in the Master Bond Resolution to levy the taxes provided for in Section 73-9-16 for the payment of annual operation and maintenance costs.

The District's obligation under Section 6.19 of the Master Bond Resolution is not a general obligation of the District and does not require an election. Section 73-9-32(1) of the Act requires an election for bonds or long-term financial obligations of a similar magnitude. If future costs will be payable annually as they arise--and if an extraordinary source of income will not be required for the payments, but instead the payments will be made from ordinary sources of income and revenues for the year--then voter approval is not required for the District to agree today to pay such future costs. In Section 6.19 of the Master Bond Resolution the District has agreed to pay future operation and maintenance costs from taxes it is authorized to levy, but only on an annual pay-as-you-go basis. The taxes, if any, collected under Section 6.19 of the Master Bond Resolution are not pledged to pay the bonds of the District. The District has merely committed itself in Section 6.19, as it is entitled to

do under Section 73-9-16 of the Act, to levy limited taxes for the payment of operation and maintenance expenses, not for the payment of the bonds. Such taxes are merely incidental to the bonds issued under the Master Bond Resolution. Consequently, under Section 73-9-32(4), no election is required for such bonds except as provided in Section 73-9-32(5).<sup>21</sup>

V. THE 1988 BOND RESOLUTION AND NOTICES THEREFOR ARE LEGALLY PROPER.

In its Third Claim for Relief, Sandy City contends that the notices with respect to the proposed bonds and the November 17, 1988 meeting agenda were legally inadequate under truth in taxation legislation, the Open Meetings Act, the Municipal Bond Act, the UWC Act and the due process clause. Each of Sandy City's claims is without merit.

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<sup>21</sup> This same rationale was used by this Court in evaluating the application of the election requirement in Article XIV, Section 3 of the Utah Constitution to the District. Patterick, 145 P.2d at 511-12. The Utah Supreme Court has made it clear that a contractual obligation created today to pay costs incurred in future years is not debt within the meaning of Article XIV, Section 3 of the Utah Constitution, as long as the costs are to be paid in the years in which they are incurred. Voter approval is not required for obligations that are to be discharged on an annual pay-as-you-go basis. See Municipal Bldg. Auth. v. Lowder, 711 P.2d 273 (Utah 1985); Barlow v. Clearfield City Corp., 268 P.2d at 682; Barnes v. Lehi City, 279 P. 878 (Utah 1929); Bair v. Layton City, 307 P.2d 895 (Utah 1957).

**A. THE DISTRICT'S LEVY DOES NOT VIOLATE THE TRUTH IN TAXATION LEGISLATION.**

Sandy City's contention that the District's levy of taxes violates "truth in taxation" legislation has no discernible basis. Sandy City does not contend that there have been tax increases levied in any year contrary to that legislation. Rather, Sandy city argues that the commitment to tax at maximum levels renders meaningless any public hearing on future tax increases. However, as the District is not obligated to tax revenues at maximum levels, Sandy City's argument has no merit. (See IV, supra.)

**B. THE NOVEMBER 17, 1988 AGENDA WAS LEGALLY SUFFICIENT UNDER THE OPEN MEETINGS ACT.**

Section 52-4-6 of the Open Meetings Act governs the giving of notice for meetings of public bodies. Utah Code Ann. § 52-4-6 (1989). Subsection (2) of that section simply requires that the notice shall include "the agenda, date, time and place of meetings." Id. The form of the notice for the November 17, 1988 meeting of the Board of Directors of the District plainly gives the date, time, place and agenda of the meeting, and includes reference to an item "Notice of Intent to Issue Bonds." That reference informs the public of the existence of a bonding issue on the agenda, and is sufficient notice to prompt further inquiry by any interested member of the public.

While there is no Utah case on point, cases from other jurisdictions indicate that the District's notice of intent to issue bonds was sufficient.<sup>22</sup> In Meacham Contracting Co. v. Kleiderer, 142 S.W. 720 (Ky. Ct. App. 1912), the court considered the sufficiency of a council meeting notice "to consider ordinances." The state statute required that the meeting notice "shall designate the purpose of the same, and no other business shall be considered." While the court found the notice reference too vague, it wrote:

The notice should specify the purpose of the meeting with such fulness and accuracy as to give reasonable information of the business it is proposed to transact at the special meeting.

\* \* \*

We do not think it necessary that the notice should designate accurately or in detail the character of business that will be brought before the council. We do not wish to give the words in the statute a narrow construction or one that would require the exercise of particular care in the choice of words to be used in the notice. A practical common sense observation of the statute does not demand this

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<sup>22</sup> The case cited by Sandy City, Grindstone Butte Mutual Canal Co. v. Idaho Power Co., 574 P.2d 902 (Idaho 1978), is distinguishable from the facts of this case. In Grindstone, the agency sent out a notice of a general rate increase, but not that the rate structure applicable to certain businesses would be modified and require such businesses to bear a higher proportion of the increase. Id. at 906-07. In the current situation, however, there is no such hidden agenda.

strictness; but neither should its purpose be defeated by a loose construction that would leave it without meaning or effect. For example, if this notice had read "ordinances relating to street improvements," or "ordinances that have had their first reading," or "ordinances relating to revenue and taxation," or "the granting of franchises," or "ordinances relating to the police or fire department," would be considered, although the notice might not specify the particular subject under these general titles that would be considered, it would yet give information of the scope of the business to be transacted, and no person of ordinary intelligence would be deceived or misled by it. . . . The statute does not give the form of the call or notice, and it will be deemed sufficient if it merely designate in general terms the purpose of the meeting. Details are unnecessary.

Id. at 721-23. That logic applies here and demonstrates the adequacy of the meeting notice.<sup>23</sup> See also Andrews v. Independent School Dist. No. 29, 737 P.2d 929 (Okla. 1987); Santa Barbara School Dist. v. Superior Court, 530 P.2d 605 (Cal. 1975).

**C. SECTION 73-9-32(5) PRESCRIBES THE REQUIREMENT FOR PUBLICATION OF NOTICE OF THE INTENT TO ISSUE REVENUE BONDS.**

Section 73-9-32(5) governs the notice requirement for a proposed bond issue where the bonds are issued by a water

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<sup>23</sup> The Plaintiff J. Steven Newton, the Mayor of Sandy City, is a member of the District Board and was in attendance at the November 17, 1988 meeting. Because the plaintiffs had adequate notice of the agenda and were actually present at the meeting, they have no standing to challenge the adequacy of the agenda.

conservancy district and are to be repaid from revenues. Utah Code Ann. § 73-9-32(5)(Supp. 1989). That section directs that notice of the intention to issue such bonds "be published once in a newspaper of general circulation in the district." Id. (emphasis added). Such a notice was authorized by resolution of the Board of Directors of the District on November 17, 1988, and the notice was published in The Salt Lake Tribune pursuant thereto on November 19, 1988. The publication requirement set forth in Section 73-9-2 applies only when the term "publication" is used in the UWC Act and where there is "no manner specified therefor." Id. §73-9-3. Section 73-9-32(5) clearly specifies the manner for publication, and the more general requirements set forth in Section 73-9-2 are thus inapplicable. Consequently, the single publication was legally sufficient.

**D. THE DISTRICT GAVE PROPER NOTICE OF THE INTENT TO ISSUE BONDS UNDER THE MUNICIPAL BOND ACT.**

Sandy City is incorrect in asserting that the Municipal Bond Act requires the publication of "notice of bonds to be issued." The Municipal Bond Act in fact makes the publication of notice of bonds to be issued optional.

The governing body of any public body may provide for the publication of any resolution or other proceeding adopted by it under this

chapter in the "official newspaper" designated under Subsection (1).

(3) In case of a resolution or other proceeding providing for the issuance of bonds, the governing body may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued . . . .

Id. § 11-14-21(2) and (3) (Supp. 1989) (emphasis added). The failure to publish such a notice does not affect the validity of the bonds, but rather prevents the District from taking advantage of the 30 day statute of limitation provided in the Municipal Bond Act. Id. §11-14-21(4). In any event, Section 11-14-21 plainly contemplates a single publication.

**E. THE DISTRICT'S NOTICES WERE NOT IMPERMISSIBLY VAGUE.**

Sandy City's discussion about due process is puzzling. The District can see no connection between a pre-termination hearing for a public employee and the issuance of bonds or the levy of taxes. No property rights are affected in this case. The acquisition by the District of water rights from third parties does not impair any property right that Sandy City may have. Moreover, the question of the issuance of bonds and of imposing general taxes is not a matter which is subject to due process notice considerations. See Ampco Printing v. City of New York, 197 N.E.2d 285 (N.Y. 1964). So long as statutory procedures are followed, including compliance with the Open Meetings Law, Sandy City has no separate right, constitutional or otherwise, to a



public hearing prior to the decision to undertake a project, to issue bonds, or to levy a tax. In any event, the statutory notice requirements followed by the District in this case should satisfy any due process requirement that may exist.

**VI. DISTRICT COURTS LACK JURISDICTION TO FASHION EQUITABLY NEW REMEDIES FOR THE DISTRICT.**

In its First and Fourth Claims for Relief, Sandy City asks the court to fashion equitably new procedures for the governance of the District concerning the withdrawal of Sandy City from the District and an election for voters to approve the District's new headquarters building. Such remedies are beyond the court's jurisdiction and procedurally improper.

**A. THE PROCEDURES FOR GOVERNANCE OF A WATER CONSERVANCY DISTRICT ARE EXCLUSIVELY WITHIN THE PROVINCE OF THE LEGISLATURE.**

Water conservancy districts are statutory creatures, whose rights, powers, restrictions and procedures are governed by the UWC Act. The UWC Act assigns a limited role to district courts. Pursuant to specific criteria, they establish districts, Utah Code Ann. § 73-9-3 (1980), and subdistricts, *id.* § 73-9-14, and have continuing jurisdiction "of land and other property proposed to be included in said district or affected by said district," *id.* § 73-9-6. Courts further have a limited role in the procedure for inclusion of additional land in a district, *id.* § 73-9-29. Upon

specific request by a district, a court examines and determines the validity of any action taken by the district, id. § 73-9-36. However, contrary to Sandy City's assertions, district courts nowhere in the UWC Act are given general supervisory or administrative power over water conservancy districts. In a case involving improvement districts, the Utah Supreme Court wrote about the UWC Act:

[I]n the Water Conservancy Act the district courts upon petition of a specified percentage of property owners were the agencies through which the districts could be established . . . once the initiating agencies [the district courts] have acted and a district has been formed their functions cease and the governing body of the district assumes full control of the district and its properties.

Tygesen v. Magna Water Co., 226 P.2d 127, 130 (1950) (emphasis added).

Sandy City's request to have the district court promulgate in equity new and additional procedures for withdrawal of property from the District and for voter approval of District Board decisions would require the lower court to undertake a legislative function. Such action is not within the power of the courts and should be left to legislative prerogatives. In a case involving a request for judicial exclusion of property from a utility district, the Supreme Court of Tennessee wrote:

Where the Legislature has fixed the boundaries of a corporation such as this, this exercise of

power by the Legislature is a legislative power and not a judicial one, and hence it is not subject to judicial revision.

Consolidated Gray-Fordtown-Colonial Hts. Util. Dist. v. O'Neill, 354 S.W.2d 63, 65 (Tenn. 1962). The Colorado Supreme Court, in reviewing a request for judicial disconnection from a municipality, wrote:

There exists no inherent power in a court to grant a disconnection. The power of annexation and disconnection is essentially legislative and absent an express statutory authorization the court lacked jurisdiction to enter the questioned decree.

City of Littleton v. Wagenglast, 338 P.2d 1025, 1028 (Colo. 1959). See also Punke v. Village of Elliott, 5 N.E.2d 389, 392 (Ill. 1936); Richards v. City of Tustin, 37 Cal.Rptr. 124 (Cal. App., 4th Dist. 1964). In the absence of an express delegation to courts, Sandy City's redress must be sought in the Legislature and not here.

**B. BECAUSE THE UWC ACT GRANTS CERTAIN SPECIFIC POWERS TO THE DISTRICT COURT, IT IMPLIEDLY EXCLUDES ALL OTHERS.**

Under general rules of statutory construction in Utah, where a statute grants a power or right the powers not mentioned in the enumeration are intended to be excluded. 73 Am.Jur.2d, Statutes, §§ 211-12 (1974); see also Great Salt Lake Auth. v. Island Ranching Co., 414 P.2d 963, 966 (Utah 1966). The UWC Act

provides a specific procedure for the exclusion of property from conservancy districts upon the petition of the owners in fee of lands in a district. Utah Code Ann. § 73-9-30 (1980). In this case, Sandy City, and not the owners in fee of any lands in the District, submitted to the District the request for exclusion of lands. Therefore, Sandy's request was not proper under section 73-9-30. Moreover, the existence of § 73-9-30 impliedly excludes any other disconnection procedure which this Court might consider. Similarly, the UWC Act specifically provides that a district, on its own petition, can seek judicial confirmation of its actions. See id. § 73-9-36. Therefore, the Act impliedly excludes judicial review of District decisions without District request, such as the decision on the headquarters building or the denial of Sandy's request to disconnect. Finally, the UWC Act requires voter approval of general obligation bonds and contracts and for a petition procedure to require voter approval of revenue bonds. See id. § 73-9-32 (Supp. 1989). Therefore, it impliedly excludes electorate review or approval of any other District action.

**C. SANDY CITY'S ASSERTED BASES FOR BROAD EQUITY JURISDICTION OF THE DISTRICT COURT DO NOT APPLY UNDER THE ACT.**

Sandy City asserts that the district court has on prior occasions recognized that it has powers beyond those expressed in the UWC Act to permit exclusion of the lands from the District.

(Appellants' Brief at 48.) Sandy City bases its argument on the fact that the District cited Rule 60(b)(7) in a prior petition to the district court for exclusion of lands in Hi-Country Estates Phase II from the District. However, Sandy City apparently is unaware that the petition to exclude Hi-Country Estates was made because the District never extended water services, either retail or wholesale, to the land involved in that project. Therefore, the Decree initially including those lands was erroneous in that sense. Here, however, Sandy City does not contend that such error occurred. More importantly, the petition in the Hi-Country Estates Phase II matter generally complied with the procedures outlined in Section 73-9-30, unlike Sandy City's request.

Sandy City also argues that "authority for broad equity jurisdiction" is established by the case law and statutory language allowing the severance of unconstitutional provisions or clauses as a "savings" mechanism. (*Id.* at 48-49.) However, the power of a court to sever unconstitutional clauses or provisions from sections or acts is inherently deferential to the Legislature's lawmaking power and, indeed, is chiefly pursuant to legislative direction, such as in the case of the UWC Act's savings clause. No equity jurisdiction to fashion new withdrawal procedures on an equal basis with the Legislature can be derived therefrom.

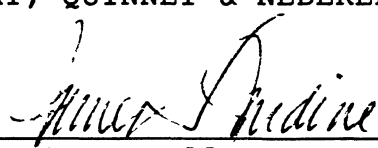
Sandy City finally argues that the rule of statutory construction that words will be construed to effectuate the intention and purposes of the Legislature supports a broad equity jurisdiction of the district court in this case. (Id. at 49.) However, that rule of construction respects the Legislature's singular role in lawmaking by having courts seek to effectuate the Legislature's intention, rather than elevating the court to a co-equal lawmaking status with the Legislature. That rule provides no authority for the proposition that courts have inherent equitable powers to judicially create new procedures in addition or contrary to those provided by the Legislature in the UWC Act.

#### CONCLUSION

For the above reasons, the District asks this Court to follow its prior decisions and to affirm the decision of the lower court.

DATED this 11th day of August, 1989.

RAY, QUINNEY & NEBEKER

  
Brent W. Todd  
James S. Jardine  
Rick B. Hoggard

RBH+220

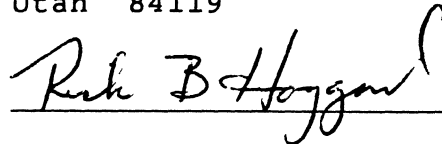
CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of August, 1989, four true and correct copies of the foregoing BRIEF OF RESPONDENT SALT LAKE COUNTY WATER CONSERVANCY DISTRICT were hand-delivered to each of the following:

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DETERMINATIVE CONSTITUTIONAL PROVISIONS

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## **ARTICLE V**

### **DISTRIBUTION OF POWERS**

#### **Section**

1. [Three departments of government.]

#### **Section 1. [Three departments of government ]**

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

**ARTICLE VI**  
**LEGISLATIVE DEPARTMENT**

**Sec. 28. [Special privileges forbidden.]**

The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

**Compiler's Notes.** — The 1971 proposed amendment to this section by Senate Joint Resolution No 11 was repealed and withdrawn by Senate Joint Resolution No 1, Laws 1972

The 1972 amendment was proposed by Senate Joint Resolution No 1, Laws 1972 and was approved at the general election on November 7, 1972. The amendment transferred to this section the matter formerly comprising section 29 of this Article

## **ARTICLE XIII**

### **REVENUE AND TAXATION**

#### **Sec. 5. [Local authorities to levy local taxes — Sharing tax and revenues by political subdivisions.]**

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary contained in this Constitution, political subdivisions may share their tax and other revenues with other political subdivisions as provided by statute.

**Compiler's Notes.** — Laws 1980, Senate Joint Resolution No. 6, proposed to amend Article XIII. The proposed amendment was submitted to the electors at the general election in 1980 and failed to pass because it did not receive the necessary majority.

The 1982 amendment was proposed by Senate Joint Resolution No. 3, Laws 1982 and was approved at the general election on November 2, 1982 to become effective January 1, 1983. The amendment added the second sentence.

**Cross-References.** — Revenue and appropriations limitation, § 59-17-101 et seq.

Revenue sharing between political subdivisions, § 11-13-16.5.

## DETERMINATIVE STATUTES

Utah Code Ann. § 11-14-21 (Supp. 1989)

Utah Code Ann. § 73-8-50 (Supp. 1989)

Utah Code Ann. § 73-9-30 (1980)

Utah Code Ann. § 73-9-32 (Supp. 1989)

## CHAPTER 14

# UTAH MUNICIPAL BOND ACT

### 11-14-21. Publication of notice, resolution, or other proceeding — Contest.

(1) If a municipality has one or more newspapers published within its boundaries, the governing body of the municipality shall, from time to time, designate one of the newspapers as the "official newspaper" for the publication of all notices required under this chapter. Otherwise, the governing body, from time to time, shall designate a newspaper with general circulation in the municipality as the "official newspaper" for the publication of such notices.

(2) The governing body of any public body may provide for the publication of any resolution or other proceeding adopted by it under this chapter in the "official newspaper" designated under Subsection (1).

(3) In case of a resolution or other proceeding providing for the issuance of bonds, the governing body may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, titled as such, containing:

- (a) the name of the issuer;
- (b) the purpose of the issue;
- (c) the type of bonds and the maximum principal amount which may be issued;
- (d) the maximum number of years over which the bonds may mature;
- (e) the maximum interest rate which the bonds may bear, if any;
- (f) the maximum discount from par, expressed as a percentage of principal amount, at which the bonds may be sold; and
- (g) the times and place where a copy of the resolution or other proceeding may be examined, which shall be at an office of the issuer, identified in the notice, during regular business hours of the issuer as described in the notice and for a period of at least 30 days after the publication of the notice.

(4) For a period of 30 days after the publication any person in interest may contest the legality of such resolution or proceeding, any bonds which may be authorized by such resolution or proceeding, or any provisions made for the security and payment of the bonds. After the 30-day period no person may contest the regularity, formality, or legality of such resolution or proceeding for any cause.

**History:** C. 1953, 11-14-21, enacted by L. 1977, ch. 45, § 7; 1983, ch. 346, § 5; 1987, ch. 201, § 1.

**Amendment Notes.** — The 1987 amendment, effective March 16, 1987, redesignated

former Subsections (2) and (3) as present Subsections (3) and (4), added present Subsection (2), and made minor changes in phraseology and punctuation.

## CHAPTER 8

### METROPOLITAN WATER DISTRICTS

#### **73-8-50. Withdrawal from district.**

Any municipality whose corporate area has become or is a part of any water district may withdraw therefrom in the following manner:

The governing body of any such municipality may submit to the electors thereof at any general or special election the proposition of withdrawing from any water district incorporated thereunder. Notice of such election shall be given in the manner provided in Subsection 73-8-49(2). Such election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of municipal elections in said city. In the event that the majority of the electors voting thereon vote in favor of such withdrawal, the result thereof shall be certified by the governing body of such municipality to the board of directors of the district. A certificate of the proceedings hereunder shall be made by the secretary of the district and filed with the lieutenant governor, and upon the filing of such certificate the area of the municipality so withdrawing shall be excluded from the said water district, and shall no longer be a part thereof; provided, however, that the property within the said municipality as it shall exist at the time of such exclusion shall continue taxable for the purpose of paying said bonded and other indebtedness outstanding or contracted for, at the time of such exclusion and until such bonded or other indebtedness shall have been satisfied.

**History:** L. 1935, ch. 110, § 49; C. 1943, 100-10-50; L. 1984, ch. 68, § 91.

**Compiler's Notes.** — The 1984 amendment

substituted "lieutenant governor" for "secretary of state" in the fifth sentence of the second paragraph.

## CHAPTER 9

# WATER CONSERVANCY ACT

**73-9-30. Petition for exclusion of lands in district — Procedure — Court order.** The owner or owners in fee of any lands constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the lands which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which said lands, or the major portion thereof, are located. The notice shall state the filing of such petition, the names of petitioners, descriptions of lands mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented, in writing, by any person showing cause as aforesaid, why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the lands mentioned in the petition, or any part thereof. The board, if they deem it not for the best interests of the district that the lands mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied; but if they deem it for the best interest of the district, that the lands mentioned in the district, or some portion thereof, be excluded from the district, and if there are no outstanding bonds of the district, then the board may order the lands mentioned in the petition or some portion thereof, to be excluded from the district. Provided, further, that in case contract has been made between the district and the United States or any agency thereof, no change shall be made in the boundaries of the district unless the secretary of the interior shall assent thereto in writing and such assent be filed with the board. Upon such assent, any lands excluded from the district shall upon order of the court be discharged from all liens in favor of the United States under the contract with the United States or under bonds deposited with its agents. Upon allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court and upon order of the court said lands shall be excluded from the district.



## CHAPTER 9

# WATER CONSERVANCY ACT

### 73-9-32. Election on issuance of bonds or incurring contract indebtedness or obligation — When required.

(1) If the majority of a water conservancy district board approves a resolution determining that the interests of the district and the public interest or necessity demand the acquisition, construction, or completion of any water supply, waterworks, improvements, or facilities, or the making of any contract with the United States or other persons or corporations, public or private, to carry out the purposes of the district, wherein an indebtedness or obligation is created, to satisfy which requires an expenditure greater than the ordinary annual income and revenue of the district, the board shall adopt a resolution directing that an election be held to determine whether bonds shall be issued, or an indebtedness or obligation under a contract shall be incurred in the amount and for the purposes specified in the resolution.

(2) The following shall be subject to the conditions provided in Chapter 14, Title 11, the Utah Municipal Bond Act:

- (a) adoption of the resolution calling the election;
- (b) giving notice of the election;
- (c) conduct of the election;
- (d) determination of voters' qualifications; and
- (e) canvassing of election results.

(3) The board may, for purposes of the election:

- (a) treat the entire district as a single precinct or divide the district into precincts; and
- (b) fix polling places.

(4) If bonds or the indebtedness or obligations under a contract are payable solely from revenues derived from the operation of the district's works, no election is required under this section prior to issuance of the bonds or the entering into of the contract, except as provided in Subsection (5).

(5) No district may issue bonds or incur an indebtedness or obligation under a contract payable solely from revenues unless:

(a) the issuance of the bonds or the incurring of the contract indebtedness or obligation has been approved at an election called and held as provided in this section; or

(b) the board of directors adopts a resolution declaring the intention of the district to issue bonds or incur a contract indebtedness or liability payable solely from revenues in the amount and for the purpose provided in the resolution and directs that notice of this intention be published once in a newspaper of general circulation in the district.

(i) The notice of intention shall set forth:

(A) the amount and purpose of the proposed bond issue or contract; and

(B) when and where petitions may be filed requesting the calling of an election to determine whether the bonds may be issued or the contract indebtedness or obligation may be incurred.

(ii) The resolution of the board shall specify the form of the petitions.

(iii) If, within 60 days after the publication of the notice of intention, a petition is filed with the secretary of the board, signed by not less than 5% of the qualified electors of the district, requesting that an election be called to authorize the issuance of the bonds or the incurring of the contract indebtedness or liability payable solely from revenues, then the board shall proceed to call and hold an election as provided in this section. The qualified electors of the district shall be certified to the board, prior to the adoption of the resolution, by the clerks of the counties in which portions of the district are located.

(iv) If no petition is filed, or if the number of signatures filed

**History:** L. 1941, ch. 99, § 32; C. 1943, 100-11-32; L. 1977, ch. 282, § 6; 1981, ch. 285, § 5; 1985, ch. 190, § 3; 1988, ch. 146, § 2.

**Compiler's Notes.** — The 1981 amendment inserted the Subsection (1) designation; substituted "chapter" for "act" in the first sentence of Subsection (1); added the last sentence of Subsection (1); added Subsection (2); and made minor changes in phraseology and punctuation.

The 1985 amendment inserted references to contract indebtedness or obligations throughout the section; inserted "or incurred" in the first sentence of Subsection (1); inserted "Chapter 14, Title 11" in the second sentence of Subsection (1); inserted "or the entering into of a contract" in the last sentence of Subsection (1); rewrote Subsection (2)(a) which formerly read, "No district may issue revenue bonds under this chapter unless"; inserted "or contract" near the beginning of Subsection (2)(b); inserted "to the board, prior to the adoption of

the resolution" in the third sentence of Subsection (2)(b); substituted "an election" for "a bond election on the issuance of the bonds" near the end of the third sentence of Subsection (2)(b); added "or enter into the contract" at the end of the section; and made minor changes in phraseology.

The 1988 amendment, effective April 25, 1988, divided and redesignated the provisions of former Subsection (1) as present Subsections (1) to (4); substituted "in Subsection (5)" for "in Subsection (2) and in Section 73-9-32.5" at the end of Subsection (4); redesignated former Subsection (2) as present Subsection (5) and within that subsection redesignated former Subsection (a) as the present introductory paragraph, redesignated former Subsections (a)(i) and (a)(ii) as present Subsection (a) and the introductory paragraph in Subsection (b), and divided former Subsection (b) into present Subsections (b)(i) to (iv); and made stylistic changes throughout the section.

IMPORTANT DOCUMENTS

Amended Complaint

Order

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IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

SANDY CITY, a municipal corporation, and J. STEVEN NEWTON,	:	
	:	A M E N D E D
Plaintiffs,	:	C O M P L A I N T
vs.	:	
SALT LAKE COUNTY WATER CONSERVANCY DISTRICT, and JOHN DOES NOS. 1-10,	:	
	:	Civil No.88-908315 CV
Defendants.	:	Judge Raymond S. Uno

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Plaintiffs amend their complaint to allege as follows:

PARTIES

1. Plaintiff Sandy City (herein "City") is a municipal corporation of the State of Utah, organized under authority of the Utah "Optional Forms of Municipal Government Act" (Section 10-3-12-1 et seq., Utah Code Annotated 1953, as amended) and located in Salt Lake County, Utah. It is a "municipality" within the meaning of 10-1-104, Utah Code Ann. (1953), and may sue in its own name under 10-1-20, Utah Code Ann. (1953). Plaintiff Sandy City also maintains a Water Department to service water needs of its

residents and is a wholesale water customer of the Salt Lake County Water Conservancy District (herein "Conservancy District").

2. Plaintiff J. Steven Newton (herein "Newton") is a resident and elector within the boundaries of the Defendant and a member of the Board of Directors of the Conservancy District. Plaintiff Newton also pays real property taxes to the District. Plaintiff Newton purchases culinary water from Sandy City which in turn purchases the water from the Defendant.

3. The Salt Lake County Water Conservancy District was organized in 1951, purportedly under authority of the Water Conservancy Act (73-9-1 et seq., Utah Code Ann. 1953), and is located in Salt Lake County, Utah. The Conservancy District asserts taxing powers and other jurisdiction over substantially all nonexempt real property lying within the territorial boundaries of the City. Despite the broad range of asserted Conservancy District powers, the nature of Conservancy District organization and operations is such that public scrutiny of the District is minimal.

4. John Does 1-10 are unidentified officials, officers, employees, or agents of the named defendants or others who participated or are interested in the events that are the subject of this action.

#### JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to 78-3-4 and 78-33-1, Utah Code Ann. (1953), and Rules 65A and 65B of the Utah Rules of Civil Procedure. Venue is properly laid in the Third Judicial District Court for Salt Lake County pursuant to 78-13-1, Utah Code

Ann. (1953) (actions respecting real property), 78-13-3 (actions against a conservancy district), and 78-13-7 (all other actions). In addition, the District Court has general oversight and equity jurisdiction over Conservancy Districts under Section 73-9-1 et seq., Utah Code Ann. (1953) (Water Conservancy Act).

#### SUBJECT REAL PROPERTY

6. Real property lying within the territorial boundaries of the City consists of approximately 19.4 square miles, between approximately 7800 South and 12200 South, and 700 West and 3000 East, in Salt Lake County.

7. The Conservancy District asserts jurisdiction over the majority of territory within Sandy City boundaries pursuant to its original establishment and subsequent annexations of territory.

#### ADMINISTRATIVE HISTORY

8. The Conservancy District was organized in 1951 to provide water for municipal and industrial use within Salt Lake County outside the Salt Lake City service area. A copy of the court decree establishing the district is attached hereto as Exhibit "A" and is made a part hereof by reference.

9. Since organization of the Conservancy District, District officials have periodically sought to extend District boundaries in order to expand its tax base and service delivery area. A number of such expansions purport to encompass territory within Sandy City.

10. Conservancy District officials have also periodically sponsored judicial approval of disconnection from the District.

The following incidents of disconnection are among those which have removed territory from within District Boundaries:

a. Territory lying in the East Millcreek and Cottonwood Heights area (District Court Order of Exclusion entered November 1, 1979).

b. Subdivision located in Township 4 South, Range 2 West, Salt Lake Base and Meridian (District Court order entered January 13, 1988).

c. Properties once owned by Dixie Six Corporation, Callrex Inc., Concepts Inc., Salt Lake County, John E. Roberts, Romeo L. Vellatin and Barker Brothers (District Court Order of Exclusion entered November 8, 1978).

11. Conservancy District officials have periodically authorized and/or incurred indebtedness, including bonded indebtedness in excess of \$41 million, under authority of a resolution providing for the issuance of Water Conservancy District Revenue Bonds, adopted February 6, 1987. Section 6.19 of that resolution provides as follows:

Levy of Tax to Pay Operation and Maintenance Costs. The Issuer shall, so long as any of the Bonds or Contracts are Outstanding, levy annually the tax of .0004 on the dollar, or the maximum amount of such different annual levy as may be hereafter provided for by law, of assessed valuation of taxable property within the Issuer or so much thereof as shall be necessary, for payment of Operation and Maintenance Costs pursuant to the provisions of Section 73-9-16, Utah Code Annotated 1953, as amended.

12. Conservancy District officials have levied taxes and established fees to service indebtedness and to provide services

to customers assertedly within its boundaries. District officials have also refrained from levying taxes and collecting fees from properties disconnected from the District.

13. Since initial inclusion of Sandy City in the Conservancy District in 1951, the City has experienced dramatic growth and development. Sandy is now known nationally as having one of the fastest growing populations in the Country. Such growth is projected to continue at a rapid rate into the twentieth century.

14. City officials believe that the capacity and willingness of the Conservancy District to service this growth and provide firm water commitments to the City and its residents at reasonable rates is strictly limited and that the rapid growth of the City will soon require water resource capacities at economical rates which the Conservancy District cannot or will not provide.

15. City officials believe, pursuant to extensive study and investigation, that firm water resources are available to the City and its residents, at reasonable rates, through the Metropolitan Water District of Salt Lake City (herein "Metropolitan District"). In order to secure firm water resource commitments, the City has applied to the controller of the Metropolitan Water District for a statement preliminary to annexation to that District, as required by Utah Code Ann. 73-8-49(2). A copy of City Council Resolution 88-34 C, authorizing such application, is attached hereto as Exhibit "B."

16. On May 17, 1988 the Sandy City Council adopted Resolution 88-40 C, applying to the Board of Directors of the



Metropolitan District for consent to annex the City to that District, and requested that the Board of Directors grant such application subject to such terms and conditions as may be fixed. A copy of that Resolution is attached hereto as Exhibit "C."

17. On about January 9, 1989, the Metropolitan Water District replied by Resolution to the City's application, setting the terms and conditions of annexation as required by statute, which terms and conditions are acceptable to the City.

18. On October 18, 1988, under authority of City Council Resolution #88-84 C, the City set a special election to be held in Sandy City on February 7, 1989, to determine by a majority vote of the registered voters voting in the election whether or not to annex property within Sandy City to the Metropolitan Water District of Salt Lake City, subject to such terms and conditions as have been fixed.

19. Concurrent with its application for annexation to the Metropolitan Water District, the City has requested disconnection of property within Sandy City from the Conservancy District, in order to minimize unfair financial burdens on the City or its residents. The City also proposed the setting of reasonable terms and conditions for disconnection of such property from the Conservancy District.

20. On November 17, 1988, the Conservancy District Board of Directors denied the City's request for disconnection (District officials have subsequently informed City representatives that the District will not consider disconnection of the City under any

conditions). Instead, the Conservancy District Board of Directors adopted a supplemental resolution approving additional bonded indebtedness, up to \$26.5 million, to finance the following:

<u>Projects</u>	<u>Defendants' Estimated Cost</u>
a. Acquisition of water rights -	
Utah Lake and Welby Jacob	\$12,500,000
b. Jordan Narrows Pump Station	5,187,000
c. Construction of District Headquarters	
Complex equipment and furnishings	4,761,000
d. Addition and improvements to the	
water transmission distribution	
systems and related well modifications	658,000
e. Estimated preliminary and incidental	
expenses, costs of insurance,	
necessary repairs and contingencies	3,394,000

21. On December 15, 1988, the District Board of Directors excluded the District Headquarters Complex from the bond authorization and reduced the amount of the proposed bonds to not exceed \$23 million. The District did not, however, amend its resolution or notice previously adopted authorizing bonding. The effect of such removal will be to exclude the decisions relating to the building from the public petition and election process provided for in Utah Code Ann. 73-9-32.

#### FIRST BASIS FOR RELIEF

22. Plaintiffs repeat and reallege paragraphs 1 through 21 above.

23. The elected officials of the City support annexation to the Metropolitan Water District and Plaintiff Newton duly believes that a majority of registered voters within Sandy will likewise favor such annexation.

24. If annexation is approved by election, the City will commence to derive its water from the Metropolitan Water District, pursuant to the terms and conditions of annexation, except for continuation of ongoing water purchase agreements with the Conservancy District. Sandy City will not otherwise be served by the Conservancy District, and will have no reasonable prospect of being served in the foreseeable future.

25. Because City lands will not be serviced by the Conservancy District, any benefits contemplated to accrue by inclusion within the boundaries of the Conservancy District by residents and property owners within Sandy will cease.

26. The refusal of the Conservancy District to permit disconnection of the City from the District was based upon an erroneous perception of the best interests of the District and failed to consider the needs and interest of lands and persons within Sandy City.

26. If annexation to the Metropolitan Water District is approved, lands within the City should be excluded from the Conservancy District and no longer be subject to the burdens of taxation and additional indebtedness by the District inasmuch as benefits of inclusion within the Conservancy District will not be forthcoming.

27. Utah Code Ann. 73-8-50, permits the City to withdraw from any water district within its corporate area as follows:

Any municipality whose corporate area has become or is a part of any water district may withdraw therefrom in the following manner:

The governing body of any such municipality may submit to the electors thereof at any general or special election the proposition of withdrawing from any water district incorporated thereunder. Notice of such election shall be given in the manner provided in subdivision (b) of section 73-8-49 [posting or publication] hereof. Such election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of municipal elections in said city. In the event that the majority of the electors voting thereon vote in favor of such withdrawal, the result thereof shall be certified by the governing body of such municipality to the board of directors of the district. A certificate of the proceedings hereunder shall be made by the secretary of the district and filed with the secretary of state, and upon the filing of such certificate the area of the municipality so withdrawing shall be excluded from the said water district, and shall no longer be a part thereof; provided, however, that the property within the said municipality as it shall exist at the time of such exclusion shall continue taxable for the purpose of paying said bonded and other indebtedness outstanding or contracted for, at the time of such exclusion and until such bonded or other indebtedness shall have been satisfied.

28. City officials desire to place the issue of disconnection from the Conservancy District before the Sandy City electorate, so that the public may be heard. In order to maximize informed decisions by such voters, on disconnection from the Conservancy District as well as on annexation to the Metropolitan District, the City requests a declaratory ruling by the Court as to what portion of District indebtedness is taxable upon properties in the City, upon disconnection, within the meaning of the foregoing statute.

29. In the alternative, should an election on the issue of

disconnection be determined to be impractical or otherwise, the City requests the Court to exercise its oversight jurisdiction in equity to approve disconnection of the City from the Conservancy District, for the reasons set forth above, and to determine the reasonable terms and conditions upon which such disconnection should occur.

#### SECOND BASIS FOR RELIEF

30. Plaintiffs reallege paragraphs 1 through 29 above.

31. Plaintiff Newton is a member of the District's Board of Directors and an elector of the District and is required to determine tax rates and persons upon whom taxes are to be imposed. Such plaintiff questions the constitutional authority of the non-elected members of the District's Board to levy taxes and seeks a Declaratory Judgment as to the District's tax powers. Further, an informed decision by the Sandy City electorate, on the issues of annexation and/or disconnection, require a determination of taxable obligations of lands within the City to the Conservancy District.

32. Taxation is a legislative function which can be constitutionally delegated to the elected officials of counties, cities and towns under Article XIII, Section 5 of the Utah Constitution or special districts authorized by such elected officials; however, Conservancy District officials are not elected and the District does not constitute a county, city or town or a district authorized thereby.

33. Plaintiffs believe that an informed decision by the electorate will require a determination as to whether the

Conservancy District has power to impose taxes and designate those who are to pay the same, in light of the following provisions of the Utah Constitution:

(1) Article VI, Section 28, which states that "[T]he legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capital site, or perform any municipal functions."

(2) Article V, Section 1, which effectively vests the power of taxation in the legislative branch of government.

34. Based upon the foregoing, plaintiffs request a declaratory ruling from the Court as to whether the Conservancy District has power to impose taxes and designate the persons to pay the same. Plaintiff Newton also seeks a determination as to whether the resolution providing for the issuance of Water Conservancy District Revenue Bonds, adopted February 6, 1987 (quoted in paragraph 11 above), directly or indirectly bind the District or its Board members to set fees or levy taxes at the maximum rate, contrary to their lawful authority, or constitute general obligations of the District so as to require an election.

35. Plaintiffs also request a ruling permitting the Conservancy District to issue the bonds described in Paragraphs 20 and 21 above, without obligating properties lying within the

boundaries of Sandy City.

#### THIRD BASIS FOR RELIEF

36. Plaintiffs reallege paragraphs 1 through 35 above.

37. Plaintiffs allege, upon information and belief, that the bonds referred to in paragraphs 20 and 21 above, were authorized in the absence of clear and accurate information reasonably calculated to actually inform the public of such bonds or their likely impact, or the notice required by Utah Code Ann. 73-9-2 (to be read in conjunction with Utah Code Ann. 11-14-21 and 73-9-32).

38. Failure to reasonably inform the public will prejudice their due process right to petition in opposition to such bonding or to otherwise be heard.

39. Because of inadequate notice, persons within the District are not able to respond to the District's bonding proposals. Plaintiffs are uniquely in a position to bring this issue before the court for determination, and request a declaratory ruling on the adequacy of notice of bonding.

#### FOURTH BASIS FOR RELIEF

40. Plaintiffs reallege paragraphs 1 through 39.

41. The Conservancy District is in the process of construction of a new District Headquarters Complex which, if completed, will far exceed the current needs of the District or its future needs for decades to come, even if the disconnection of City lands does not occur.

42. Plaintiffs state, on information and belief, that costs of construction are to be paid from funds derived from City area

tax revenues and that the construction project and sale of existing facilities were not adequately presented to the public for review.

43. Plaintiffs request that the Court extend its equity jurisdiction to approve an initiative form and procedure by which the construction of the new District Headquarters Complex and the sale of existing facilities, and other issues relating to the District, can be reasonably and effectively presented to the public for consideration.

WHEREFORE, plaintiffs pray that the Court issue the following:

1. A declaratory judgment as to the issues set forth in Paragraphs 28 and 29 above.

2. A declaratory judgment as to the issues set forth in Paragraphs 34 and 35 above.

3. A declaratory judgment as to the issues set forth in Paragraph 39 above.

4. A declaratory judgment as to the issues set forth in Paragraph 43 above.

5. For injunctive relief, should the court determine that an injunction is necessary to grant effective relief to plaintiffs on any or all of the foregoing.

DATED this 10<sup>th</sup> day of January, 1989.

  
WALTER R. MILLER  
Sandy City Attorney  
Attorney for Plaintiffs



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

—o—o—o—

IN THE MATTER OF THE ORGANIZATION  
OF THE SALT LAKE COUNTY WATER CON-  
SERVANCY DISTRICT PURSUANT TO CHAPTER 1  
11, TITLE 100, UTAH CODE ANNOTATED,  
1943, AS AMENDED.

D E C R E E

—o—o—o—

This matter having come on regularly for hearing before the above entitled court with the Honorable Clarence E. Baker, Judge thereof, presiding on the 11th day of September, 1951, on the petition of various owners of land within the proposed Conservancy District for the creation and organization of a Water Conservancy District, and notice of the time, place and nature of said hearing having been given in the manner and for the time prescribed by law, and the court having heard the evidence adduced and having examined all of the records and files in this proceeding and being fully advised in the premises, and having entered its findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The legal notice of the pendency of this petition has been given as required by law and by the order of this court.
2. That the petition is in all respects in proper form and signed by the requisite number of qualified signers.
3. That the territory hereinafter described should be and the same is hereby organized, constituted, and created a Water Conservancy District under the laws of the State of Utah and that said district shall be hereinafter known as "The Salt Lake County Water Conservancy District" with its office or principal place of business in Salt Lake County, State of Utah. That the property included within the district is described as follows:

Commencing at the Southwest Corner of Section 17, Township 2 South, Range 1 West, S14W (the intersection of 6200 South Street and 4000 West Street); and running thence West 2 miles, more or less, along the section lines to the Southwest corner of Section 11, Township 2 South, Range 2 West, S14W (the intersection of 6200 South Street and 5600 West Street); thence North 2 miles, more or less, along the section lines to the Southwest corner of Section 2, Township 2 South, Range 2 West, (the intersection of 4700 South and 5600 West Street); thence

West two miles, more or less, along the section lines to the Southwest corner of Section 3, Township 2 South, Range 2 East, S.L.S.M. (the intersection of 4700 South and 7200 West); thence North 4 miles, more or less, along the section lines to the Southwest corner of Section 15, Township 1 South, Range 2 East (the intersection of 2100 South Street and 7200 West Street); thence East 5 miles and 783 feet, more or less, to the boundary of Salt Lake City, which is 783 feet East of the Southwest corner of Section 16, Township 1 South, Range 1 East, S.L.S.M.; thence following the boundary of Salt Lake City (excluding all of Salt Lake City and all of South Salt Lake, as they presently exist, therefrom) as follows: South along the boundary of Salt Lake City 103 feet; thence East 10,747 feet, more or less, to the West bank of the Jordan River, thence Northerly along the West bank of the Jordan River to a point 1944.32 feet East and 33.3 feet South of a monument at 8th West and 17th South Street; thence East along the North boundary of Salt Lake City, which is along the South side of 17th South Street 2390 feet; thence North 835.8 feet; thence East 330 feet; thence North 2101.2 feet, to a point on the South side of 13th South Street, said point being 6.32 feet East and 46.16 feet South of the monument at 7th West and 13th South Street; thence East along the South side of 13th South Street 1502.8 feet to the center of Block 6, Five Acre Plat 8, Big Field Survey; thence North 2671 feet, to a point on the North side of 17th South Street; thence East 762.62 feet to a point on the West side of 4th West Street; thence North 2671 feet to a point on the South side of 13th South Street; thence East 605.36 feet to the East side of Third West; thence South along the West side of Third West Street 1730.8 feet; thence East 33 feet to the center of Third West Street; thence South along the center line of Third West Street 1501.5 feet to a point 237.1 feet South of the South side of 17th South Street, said point being 759 feet East of the West side of Second West Street; thence East 759 feet to the West side of Second West Street; thence South along the West side of Second West Street 2652.4 feet, to the South side of 21st South Street, to the boundary of South Salt Lake; thence West along the South side of 21st South Street to a point 150 feet West of the West side of Second West Street; thence South to a point in the center of Killcreek Stream and 150 feet West of the West side of Second West Street; thence Easterly along the center of said Killcreek Stream to a point of intersection of the center of said stream with the center of Third West Street; thence due East to the center of 5th East Street; thence North along the center of 5th East Street 148.3 feet, more or less; thence North 89°50' East 196 feet; thence North 0°12' East 415.9 feet; thence South 89°50' East 40 feet; thence North 0°12' East 423.91 feet; thence North 89°51' East 85 feet; thence North 0°12' East 156 feet to the boundary of Salt Lake City; thence along the South boundary of Salt Lake City East 555.5 feet; thence North 287.1 feet; thence West 240.5 feet; thence North 254.1 feet; thence East 929.5 feet to the West side of 7th East Street; thence North 018.4 feet along the West side of 7th East Street; thence East 376 feet; thence North 76 feet; thence East 429 feet; thence South 2317.05 feet; thence East 025 feet to the East side of 9th East Street, being the East line of Lot 5, Block 28, Ten Acre Plat A, Big Field Survey; thence North 1110.4 feet along the East side of 9th East Street; thence East 300 feet; thence North 200.77 feet; thence East 459 feet; thence North 1234.53 feet; to the Northeast corner of Lot 5, Block 28, Ten Acre Plat A, Big Field Survey; thence East 2676.25 feet to a point 9.22 feet East of the East side of Highland Drive, said point being North 15°34' East, 743.1 feet from a county monument; thence South 15°34' East 74.59 feet along a line parallel to and 9.22 feet East of the East side of Highland Drive, to a point 33 feet South of the North side of 30th South Street; thence East 2557.01 feet along a

442.36

1219.4

line parallel to, and 33 feet South of the North side of 30th South Street, to a point 9 feet East of the West side of Imperial Street and thence North 1177.47 feet along a line parallel to and 9 feet East of the West side of Imperial Street; thence East 1359.776 feet to the East line of Melbourne Street; thence South 111.101 feet along the East line of Melbourne Street; thence East 1780.41 feet to a point 9 feet East of the East line of 20th East Street; thence North 1117.23 feet along a line parallel to and 9 feet East of the West side of 20th East Street; thence East 526.73 feet; thence North 10 feet; thence East 2113.27 feet; thence South 322.39 feet to a quarter corner common to Sections 22 and 27, Township 1 South, Range 1 East, S.L.B.M.; thence East 2651.1 feet to the Southeast corner of said Section 22; thence, leaving the boundary of Salt Lake City, East 1 mile, more or less, along the section lines to the Southeast corner of Section 21, Township 1 South, Range 1 East; thence South 3 miles, more or less, along the section lines to the Southeast corner of Section 2, Township 2 South, Range 1 East, S.L.B.M.; thence West one mile, more or less, to the East bank of the Upper Canal; thence Northwesterly along the East bank of the Upper Canal 2 miles, more or less, to the North bank of Mill Creek; thence westerly along the North bank of Mill Creek to the center of Highland Drive; thence Southeasterly along the center of Highland Drive to the center of the intersection of Highland Drive and 5600 South Street; thence East along the center line of 5600 South Street to the center of the intersection of 5600 South Street and 9th East Street in Section 17, Township 2 South, Range 1 East, S.L.B.M.; thence South along the center of 9th East Street to the East-East center line of Section 20, Township 2 South, Range 1 East, S.L.B.M.; thence East along said East-West center line of Section 20 to the West line of Section 21, Township 2 South, Range 1 East, S.L.B.M.; thence South to the Southwest corner of Section 21, Township 2 South, Range 1 East, S.L.B.M.; thence East 2 miles, more or less, along the section lines to the Southeast corner of Section 22, Township 2 South, Range 1 East (the intersection of 7000 South and 2700 East Street); thence South 4 miles, more or less, along the section lines to the Southeast corner of Section 10, Township 3 South, Range 1 East; thence East 2 miles, more or less, along the section lines to the Southeast corner of Section 8, Township 3 South, Range 1 East; thence South 2 miles, more or less, along the section lines to the Southeast corner of Section 20, Township 3 South, Range 1 East; thence West 2 miles, more or less, along the section lines to the Southwest corner of Section 19, Township 3 South, Range 1 East; thence South 3 miles, more or less, along the Salt Lake Meridian line to the West quarter corner of Section 7, Township 4 South, Range 1 East, S.L.B.M.; thence East 5 miles, more or less, to the East Quarter corner of Section 7, Township 4 South, Range 1 East; thence North 10 miles, more or less, along the section lines to the Southwest corner of Section 17, Township 2 South, Range 1 East, which is the point of beginning; including in said district all of the territory in all of the cities and towns within said described district, except the city of Murray.

4. That the Board of Directors of said district shall consist of nine directors and the territory within said district is hereby subdivided into nine divisions and each division hereinafter described shall be entitled to one director. That the nine divisions are as follows:

(a) Division No. 1 to be known as the Granger-Hunter Division.

Commencing at the Southwest corner of Section 3, Township 2 South, Range 2 East, S.L.B.M., (the intersection of 4700 South and 7200 East); and running thence north along the section lines and along the West line of the Conservancy District 4 miles, more or less, to the Southwest corner of Section 15, Township 1 South, Range 2 East,

(the intersection of 7200 West and 2100 South); thence east along the section lines and along the north line of the Conservancy District 5 miles and 783 feet, more or less, to the boundary of Salt Lake City, which is 783 feet east of the Southwest corner of Section 16, Township 1 South, Range 1 West; thence south along the boundary of Salt Lake City and of the Conservancy District 103 feet; thence east 10,747 feet, more or less, to the west bank of the Jordan River; thence southerly along the west bank of the Jordan River to the junction of the west bank of the Jordan River with the north section line of Section 2, Township 2 South, Range 1 West; thence west along the section lines to the Northwest corner of Section 4, Township 2 South, Range 1 West; thence south along the section line to the Southwest corner of said Section 4; thence west along the section lines 5 miles, more or less, to place of beginning.

(b) Division No. 2 to be known as the West Jordan Division.

Commencing at the Southwest corner of Section 5, Township 3 South, Range 1 West, S.L.B.&M., on the west line of the Conservancy District (4000 West) and running thence north along the west boundary line of the Conservancy District and on the section lines 4 miles, more or less, to the Northwest corner of Section 20, Township 2 South, Range 1 West (4000 West and 6200 South); thence west along the Conservancy District boundary line and along the section lines 2 miles, more or less, to the Southwest corner of Section 13, Township 2 South, Range 2 West (6200 South and 5600 West); thence north along the Conservancy District boundary and the section lines 2 miles, more or less, to the Southeast corner of Section 2, Township 2 South, Range 2 West (4700 South and 5600 West) thence east along the section lines and the south line of Division No. 1 to the Southwest corner of Section 4, Township 2 South, Range 1 West; then north 1 mile, more or less, along the section line and the east line of Division No. 1 to the Northwest corner of Section 4, Township 2 South, Range 1 West; thence east along the south line of Division No. 1 and along the section lines to the west bank of the Jordan River; thence south along the west bank of the Jordan River to a point due west of Murray City's north boundary line near the east line of Section 2, Township 2 South, Range 1 West, S.L.B.&M.; thence East to the East bank of the Jordan River; thence South along the East bank of the Jordan River to the junction thereof with the southerly line of Section 2, Township 3 South, Range 1 West; thence west along the section lines  $3\frac{1}{2}$  miles, more or less, to place of beginning.

(c) Division No. 3 to be known as the South Jordan Division.

Commencing at the junction of the southern boundary of the Conservancy District and the west bank of the Jordan River in Section 10, Township 4 South, Range 1 West; and running thence west along the quarter section lines and along the south boundary of the Conservancy District  $2\frac{1}{2}$  miles, more or less, to the east quarter corner of Section 7, Township 4 South, Range 1 West; thence north along the west line of the Conservancy District and along the section lines  $6\frac{1}{2}$  miles, more or less, to the Northwest corner of Section 8, Township 3 South, Range 1 West; thence East along the section lines and along the south boundary of Division No. 3,  $3\frac{1}{2}$  miles, more or less, to the west bank of the Jordan River; thence southerly along the west bank of the Jordan River  $6\frac{1}{2}$  miles, more or less, to the place of beginning.

(d) Division No. 4 to be known as Midvale City Division.

All of the area included within the incorporated limits of Midvale City as they presently exist.

(e) Division No. 5 to be known as Sandy City Division.

All of the area included within the incorporated limits of Sandy City as they presently exist.

(f) Division No. 6 to be known as Granite Park Division.

Commencing at the junction of the west bank of the Jordan River and the Conservancy District boundary in the Northwest quarter of section 23, Township 1 South, Range 1 East, S.L.B.M.; thence northerly along the Conservancy District boundary on the west bank of the Jordan River to a point 1244.32 feet east and 33 feet south of a monument at 600 West and 1700 South Streets; thence following along the northerly boundary of the Conservancy District to the junction of said Conservancy District boundary and the center line of 900 East Street; thence South along the center line of 900 East Street to the junction of 900 East Street and the northerly boundary of Murray City; thence westerly along the northerly boundary of Murray City as it now exists, to the west bank of the Jordan River near the east line of Section 2, Township 2 South, Range 1 East, S.L.B.M.; thence northerly along the west bank of the Jordan River to the place of beginning.

(g) Division No. 7 to be known as East Mill Creek Division.

All of the Conservancy District east of the center line of 900 East Street and north of the center line of 5600 South Street which said Division is more particularly described as follows:

Commencing at the junction of the north boundary line of the Conservancy District and the center line of 900 East Street and running thence east along the northerly boundary line of the Conservancy District to the southeast corner of section 23, Township 1 South, Range 1 East, S.L.B.M., thence south along the Conservancy District boundary 3 miles, more or less, to the Southeast corner of Section 2, Township 2 South, Range 1 East; thence still following the Conservancy District boundary west to the east bank of the Upper Canal and northwesterly along the east bank of the Upper Canal and the Conservancy District boundary to the north bank of Mill Creek; thence westerly along the north bank of Mill Creek to the center of Highland Drive; thence southeasterly along the center of Highland Drive and the Conservancy District boundary to the junction of said center of Highland Drive and the center line of 5600 South Street; thence west along the center of 5600 South Street to the center of 900 East Street; thence north along the center line of 900 East Street to the place of beginning.

(h) Division No. 8 to be known as Union Division.

Beginning on the east bank of the Jordan River at its junction with the South boundary of Midvale City, said point being in the North half of Section 35, Township 2 South, Range 1 East, S.L.B.M., and running thence southerly along the east bank of the Jordan River to the junction of said east bank with the south section line of Section 2, Township 3 South, Range 1 East, S.L.B.M.; and running thence east along the section line to the Conservancy District east boundary line at the Southeast corner of Section 3, Township 3 South, Range 1 East; thence north three miles, more or less, along the Conservancy District east boundary line to the Northeast corner of Section 27, Township 2 South, Range 1 East, S.L.B.M.; thence west to the Southwest corner of Section 21; thence north to the west quarter corner of Section 21, Township 2 South, Range 1 East; thence west along said Conservancy District boundary and quarter section line to the junction of the east-west center line of Section 20 with the center line of 900 East Street; thence north along the center line of 900 East Street to the center line of 5600 South Street, which is also the easterly boundary of Murray City; thence west and south along the boundary of Murray City to the boundary of Midvale City; thence southeasterly along the east boundary of Midvale City to the south line thereof; thence westerly along the south boundary of Midvale City to the east bank of the Jordan River,

which is the place of beginning; excluding therefrom, however, Sandy City, which is Division No. 5.

(1) Division No. 9 to be known as Crescent Division.

All of that portion of the Conservancy District east of the west bank of the Jordan River and south of the south section lines of Sections 3, 4, 5 and 6, in Township 3 South, Range 1 East, and Section 1 and part of Section 2 in Township 3 South, Range 1 East, which said Division is more particularly described as follows:

Commencing at the junction of the west bank of the Jordan River with the south section line of Section 2, Township 3 South, Range 1 East, S.E. 1/4, and running thence southerly along the west bank of the Jordan River to the junction of said west bank of the Jordan River with the south boundary of the Conservancy District on the quarter section line in Section 10, Township 4 South, Range 1 East; thence east following the Conservancy District boundary to the west quarter corner of Section 7, Township 4 South, Range 1 East; and thence north  $3\frac{1}{2}$  miles, more or less, to the Southwest corner of Section 19, Township 3 South, Range 1 East; and thence east 2 miles, more or less, to the Southeast corner of Section 20, Township 3 South, Range 1 East; and thence north 2 miles, more or less, to the Southeast corner of Section 8, Township 3 South, Range 1 East; thence east 2 miles, more or less, to the Southeast corner of Section 10, Township 3 South, Range 1 East; thence north 1 mile, more or less, to the Southeast corner of Section 3, Township 3 South, Range 1 East; thence east, departing from the Conservancy District boundary  $5\frac{1}{2}$  miles, more or less, along the section lines to the junction of the west bank of the Jordan River with the south section line of Section 2, Township 3 South, Range 1 East, which is the place of beginning.

5. That the bond filed as a part of these proceedings to guarantee the payment of costs in the event the formation of the district was not effected is hereby cancelled and the sureties are hereby released of any and all obligations thereunder.

6. That said District is properly organized as required by law and shall from this date forward function as a later Conservancy District pursuant to the provisions of Title 100, Chapter 11, Utah Code Annotated 1943, as amended, with all the powers, privileges, duties and immunities prescribed by law.

Dated this 14th day of September, 1951.

Clarence E. Baker  
Judge

'B'

RESOLUTION #88-34 C

A RESOLUTION APPLYING TO THE METROPOLITAN WATER DISTRICT OF SALT LAKE CITY FOR A STATEMENT SHOWING INDEBTEDNESS OF THE DISTRICT, VALUE OF TAXABLE PROPERTY THEREIN, AND NAMES OF MUNICIPALITIES, THE AREAS OF WHICH ARE INCLUDED WITHIN THE DISTRICT.

WHEREAS, Sandy City is currently considering annexation of property within its boundaries to the Metropolitan Water District of Salt Lake City; and

WHEREAS, Section 73-8-49(2) of Utah Code Annotated 1953 provides that a city shall apply to a metropolitan water district for a statement showing the amount of the bonded and other indebtedness of the district, the assessed value of the taxable property therein according to the most recent assessment, and the names of all municipalities, the areas of which are included within the district, preliminary to applying to the District for consent to annex;

WHEREAS, it is in the best interest of the City, its residents, and property owners, to initiate the annexation process as set forth above;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Sandy City, Utah as follows:

1. It does hereby apply to the controller of the Metropolitan Water District of Salt Lake City for a statement showing the amount of the bonded indebtedness and other indebtedness of the District, the assessed value of the taxable property therein according to the most recent assessment, and the names of all municipalities, the areas of which are included within the District.

2. Upon receipt by the City of the controller's statement, the City Council shall place the same upon the Council's agenda for consideration, preliminary to application of the City for consent to annex the City to the District.

PASSED AND APPROVED this 3rd day of May, 1988.

Bruce W. Steadman  
Bruce W. Steadman, Chairman  
Sandy City Council

ATTEST:

Melissa L. Peterson  
City Recorder

RECORDED this 10th day of May, 1988.

"C"

RESOLUTION #88-40 C

A RESOLUTION APPLYING TO THE BOARD OF DIRECTORS  
OF THE METROPOLITAN WATER DISTRICT OF SALT LAKE  
CITY FOR CONSENT TO ANNEX SANDY CITY TO THE  
METROPOLITAN WATER DISTRICT

WHEREAS, pursuant to Section 73-8-49(2) Utah Code Annotated 1953, the City Council has applied to the Metropolitan Water District of Salt Lake City for a statement showing the amount of the bonded and other indebtedness of the District, the assessed value of the taxable property therein according to the most recent assessment, and the names of all municipalities, the areas of which are included within the District; and

WHEREAS, the City Council has received such statement from the District and considered the same together with other relevant information pertaining to annexation of the City to the District; and

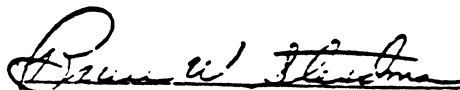
WHEREAS, the City Council has determined that it is in the best interest of the City, its residents, and property owners, to apply to the District for consent to annex;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Sandy City, Utah as follows:

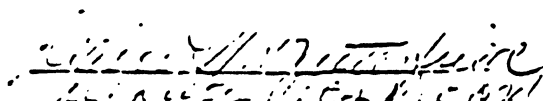
1. It does hereby apply to the Board of Directors of the Metropolitan Water District of Salt Lake City for consent to annex Sandy City to the District, and requests that the Board of Directors grant such application subject to such terms and conditions as may hereafter be fixed.

2. The City Recorder is directed to certify a copy of this resolution and the Mayor is authorized to transmit the same to the District's Board of Directors as soon as practicable thereafter.

ADOPTED this 17th day of May, 1988.

  
Bruce W. Steadman, Chairman  
Sandy City Council

ATTEST:

  
RECORDED this 17th day of May, 1988.



FILED MAR 10 1989  
Third Judicial District

MAR 10 1989

JAMES S. JARDINE (A1647)  
BRENT W. TODD (A3276) and  
BRENT D. WRIDE (A5163) of  
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SALT LAKE COUNTY  
By                      Deputy Clerk

KENDRICK J. HAFEN (A4217)  
3495 South 300 West  
Salt Lake City, Utah 84115  
Telephone: (801) 262-7421

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

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IN THE MATTER OF THE ORGANIZA-	:	O R D E R
TION OF THE SALT LAKE COUNTY	:	
WATER CONSERVANCY DISTRICT	:	Civil No. 92340
<hr/>		
SANDY CITY, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SALT LAKE COUNTY WATER	:	
CONSERVANCY DISTRICT, et al.,	:	
	:	
Defendants.	:	

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All pending motions in the above-entitled case came on  
for hearing before the Court on February 3, 1989. Plaintiffs were

represented by Walter R. Miller; Defendants were represented by James S. Jardine; D. Brent Rose appeared on behalf of Intervenor Grand County Water Conservancy District ("District"); and I. Robert Wall appeared on behalf of Intervenor West Valley City. The court heard oral arguments at that hearing and reviewed the briefs filed by the parties, and entered a Memorandum Decision on February 28, 1989. Based upon that Memorandum Decision,

IT IS HEREBY ORDERED as follows:

1. The motions to intervene of Grand County Water Conservancy District and West Valley City are granted.

2. Defendants' Motion to Dismiss the Amended Complaint is granted on the following bases:

a. The issues presented by Defendants' Motion to Dismiss are purely legal in nature. The factual affidavits submitted by Plaintiffs are not relevant to any of the legal issues raised by the Motion to Dismiss and thus are not applicable here.

b. The First Claim for Relief is dismissed for the following reasons:

(i) Section 73-8-50, UTAH CODE ANN. (1953), does not apply to or otherwise provide a procedure for withdrawal from water conservancy districts created under the Water Conservancy Act, section 78-9-1, et seq., UTAH CODE ANN. (1953);

(ii) Section 73-9-30, UTAH CODE ANN. (1953) does not provide authority for plaintiffs to withdraw from the District in this action since plaintiffs have not alleged compliance with the prerequisites of that section;

(iii) This Court does not have the statutory authority or inherent power to create a separate procedure for Sandy City to withdraw from the District other than as expressly provided in the Utah Water Conservancy Act;

c. The Second Claim for Relief is dismissed for the following reasons:

(i) because Plaintiffs' challenge to the taxing powers of the District under the Water Conservancy District Act is contrary to clear Utah Supreme Court precedent. The District does have the power to levy taxes in accordance with the Legislative dictates through the enacted statute found at Section 73-9-15, UTAH CODE ANN. (1953);

(ii) Sections 6.19 of the District's Master Resolution, adopted February 6, 1987, does not constitute a general obligation of the District nor does it require that an election be held for the approval of bonds issued thereunder. Further, Section 6.19 by its own terms does not require the District, during the life of any Bonds or

contracts, to levy annually a tax up to the maximum amount provided by law except and to the extent that the District's Operation and Maintenance Costs are not otherwise paid from other District sources.

d. The Third Claim for Relief is dismissed for the following reasons:

(i) The notice of the District Board Meeting agenda for November 17, 1988, at which meeting the Resolution authorizing a Notice of Intent to Issue Bonds was discussed and passed, was sufficient under the requirements of the Open and Public Meetings Act, UTAH CODE ANN. § 52-4-6(2) (1953).

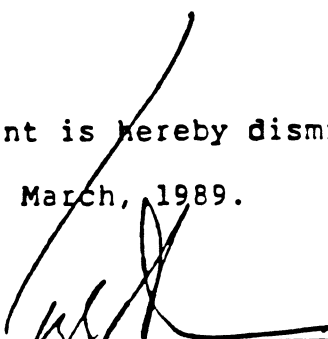
(ii) The publication of the Notice of Intent to Issue Bonds was sufficient under the requirements of Section 73-9-32(5), UTAH CODE ANN. (1988 Supp.), and was not otherwise legally inadequate in content and notice to the public.

e. The Fourth Claim for Relief is dismissed because the Court lacks statutory authority or inherent power to order, approve or fashion the election procedure requested by Plaintiffs therein.

3. As a result of the granting of the Motion to Dismiss, Plaintiffs' Motion for Partial Summary Judgment is moot and therefore denied.

4. The Amended Complaint is hereby dismissed.

DATED this 10 day of March, 1989.

  
\_\_\_\_\_  
The Honorable Timothy R. Hanson  
District Judge

Approved as to Form:

\_\_\_\_\_  
Walter R. Miller  
Sandy City Attorney  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of March, 1989, a true and correct copy of the foregoing Order was hand delivered to the following:

Walter R. Miller  
Attorney for Sandy City  
440 East 8680 South  
Sandy, Utah 84070

D. Brent Rose  
CLYDE & PRATT  
Attorney for Grand County Water  
Conservancy District  
77 West 200 South, Suite 200  
Salt Lake City, Utah 84101

Paul T. Morris  
I. Robert Wall  
Attorney for West Valley City  
2470 Redwood Road  
West Valley City, Utah 84119

Keith L. Stoney  
Attorney for Bluffdale City  
2470 South Redwood Road  
Salt Lake City, Utah 84119



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